

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

GOLDEN BETHUNE-HILL, et al.,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF ELECTIONS,
et al.,

Defendants.

Civil Action No. 3:14-cv-00852-REP-
GBL-BMK

**PLAINTIFFS' RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES
TO PLAINTIFFS, DEFENDANTS' FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS TO PLAINTIFFS, AND DEFENDANTS' FIRST SET OF REQUESTS
FOR ADMISSIONS TO PLAINTIFFS**

INTERROGATORY NO. 4:

What percentage of the voting age population of a district must identify themselves as minorities for the district to be defined as a “majority/ minority district”?

SUPPLEMENTAL RESPONSE: By definition and as a matter of law, the majority of the voting age population in a “majority-minority district” must consist of racial minorities. *Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009).

INTERROGATORY NO. 5:

Do you contend a legislature can ensure that a “majority/ minority district” does not retrogress as is required under the VRA without considering the minority voting age population of that district? If so, please explain how?

SUPPLEMENTAL RESPONSE: The U.S. Department of Justice regulations regarding compliance with the Voting Rights Act provide that in order to obtain preclearance, a jurisdiction must show that a proposed redistricting plan would not have a retrogressive effect. 28 C.F.R. §

51.54(b).

REQUEST FOR ADMISSION NO. 13: Admit that Former Delegate and now Senator Dance expressed in the public hearings on redistricting that she believed that 55% African American voting age population was necessary to ensure the minority population could elect the candidate of its choice.

SUPPLEMENTAL RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 14: Admit that Delegate Tyler expressed in the public hearings on redistricting that she believed that 55% African American voting age population was necessary to ensure the minority population could elect the candidate of its choice.

SUPPLEMENTAL RESPONSE: Admit that Delegate Tyler made statements about the 55% African American voting age threshold in the public hearings on redistricting. The public record speaks for itself.

REQUEST FOR ADMISSION NO. 15: Admit that Mayor Brian Moore of Petersburg expressed in the public hearings on redistricting that he believed that 55% African American voting age population was necessary to ensure the minority population could elect the candidate of its choice.

SUPPLEMENTAL RESPONSE: Admit that Mayor Moore made statements about the 55% African American voting age threshold in the public hearings on redistricting. The public record speaks for itself.

Dated: March 20, 2015

By: /s/ John K. Roche

John K. Roche (VSB# 68594)
Marc Erik Elias (admitted *pro hac vice*)
Elisabeth C. Frost (admitted *pro hac vice*)
PERKINS COIE LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: 202.654.6200
Facsimile: 202.654-6211

Kevin J. Hamilton (admitted *pro hac vice*)
Abha Khanna (admitted *pro hac vice*)
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

On March 20, 2015, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of Plaintiffs' Responses and Objections to Defendants' First Set of Interrogatories to Plaintiffs, Defendants' First Request for the Production of Documents to Plaintiffs, and Defendants' First Set of Requests for Admissions to Plaintiffs.

VIA ELECTRONIC MAIL

Jennifer Marie Walrath
Katherine Lea McKnight
Baker & Hostetler LLP (DC)
1050 Connecticut Ave NW
Suite 1100
Washington, DC 20036
202-861-1702
Fax: 202-861-1783
jwalrath@bakerlaw.com
kmcknight@bakerlaw.com

Efrem Mark Braden
Baker & Hostetler LLP (DC-NA)
Washington Square
Suite 1100
Washington, DC 20036
202-861-1504
Fax: 202-861-1783
mbraden@bakerlaw.com

Of counsel:
Dale Oldham, Esq.
1119 Susan St.
Columbia, SC 29210
Telephone: 803-772-7729
dloesq@aol.com

Attorneys for Intervenor-Defendants

Jeffrey P. Brundage
Daniel Ari Glass
Kathleen Angell Gallagher
Eckert Seamans Cherin & Mellott LLC
1717 Pennsylvania Ave NW
Suite 1200
Washington, D.C. 20006
(202) 659-6600
Fax: (202) 659-6699
jbrundage@eckertseamans.com
dglass@eckertseamans.com
kgallagher@eckertseamans.com

Anthony F. Troy
Eckert Seamans Cherin & Mellott LLC
707 East Main Street
Suite 1450
Richmond, Virginia 23219
(804) 788-7751
Fax: (804) 698-2950
ttroy@eckertseamans.com

Attorneys for Defendants

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 20th day of March, 2015.

/s/ John K. Roche

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(RICHMOND DIVISION)

GOLDEN BETHUNE-HILL, *et al.*,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF
ELECTIONS, *et al.*,

Defendants.

Civil Action No. 3:14-cv-00852-REP-AWA-BMK

**DEFENDANT-INTERVENORS' RESPONSES TO PLAINTIFFS'
REQUESTS FOR ADMISSION TO INTERVENOR-DEFENDANTS**

Defendant-Intervenors the Virginia House of Delegates and Virginia House of Delegates Speaker William J. Howell ("Defendant-Intervenors"), through their counsel, and pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Local Civil Rule 26(C) of the United States District Court Eastern District of Virginia, and the Memorandum Order entered on July 13, 2017 (the "Order"), hereby state the following responses to Plaintiffs' Requests for Admission to Intervenor-Defendants (the "Requests for Admission").

RESPONSES

Intervenor-Defendants respond to the Requests for Admission as follows:

Request for Admission No. 1: Admit that you utilized a 55% Black Voting Age Population threshold in drawing all or some of the Challenged Districts in the 2011 Virginia House of Delegates Plan.

Response: Denied.

Request for Admission No. 2: Admit that you utilized a 55% Black Voting Age Population threshold in drawing all or some of the Challenged Districts in the 2011 Virginia House of Delegates Plan in an effort to comply with the Voting Rights Act.

Response: Denied.

Request for Admission No. 3: Admit that you utilized a 55% Black Voting Age Population threshold in drawing all or some of the Challenged Districts in the 2011 Virginia House of Delegates Plan in the belief that any lower threshold (and/or Black Voting Age Population) might not have obtained preclearance from the Department of Justice.

Response: Denied.

Dated: July 26, 2017

Respectfully submitted,

VIRGINIA HOUSE OF DELEGATES
AND VIRGINIA HOUSE OF DELEGATES
SPEAKER WILLIAM J. HOWELL

By Counsel

/s/ Katherine L. McKnight

Katherine L. McKnight (VSB No. 81482)
E. Mark Braden (*pro hac vice*)
Richard R. Raile (VSB No. 84340)
BAKER & HOSTETLER LLP
1050 Connecticut Avenue, NW Suite 1100
Washington, DC 20036
Telephone: 202.861.1500
Facsimile: 202.861.1783
kmcknight@bakerlaw.com
mbraden@bakerlaw.com
rraile@bakerlaw.com

Of counsel:

Dalton Oldham, Esq.
1119 Susan St.
Columbia, SC 29210
Telephone: 803-772-7729
dloesq@aol.com

*Attorneys for the Virginia House of Delegates and
Virginia House of Delegates Speaker William J. Howell*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(RICHMOND DIVISION)

GOLDEN BETHUNE-HILL, *et al.*,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF
ELECTIONS, *et al.*,

Defendants.

Civil Action No. 3:14-cv-00852-REP-AWA-BMK

**OBJECTIONS AND ANSWERS OF DEFENDANT-INTERVENORS TO
PLAINTIFFS' INTERROGATORIES TO INTERVENOR-DEFENDANTS**

Defendant-Intervenors the Virginia House of Delegates and Virginia House of Delegates Speaker William J. Howell ("Defendant-Intervenors"), through their counsel, and pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Local Civil Rule 26(C) of the United States District Court Eastern District of Virginia, and the Memorandum Order entered on July 13, 2017 (the "Order"), hereby state the following objections and answers to Plaintiffs' Interrogatories to Intervenor-Defendants (the "Interrogatories").

Defendant-Intervenors object to the number of interrogatories, including all discrete subparts, propounded by Plaintiffs as exceeding the number allowable under Federal Rule of Civil Procedure 33(a)(1) and the Discovery Order paragraph 5(c).

Interrogatory No. 3: Identify the “potential primary opponent” discussed in the trial testimony of Delegate Chris Jones, *see* Trial Tr. at 326:11-12, and in the district court’s October 22, 2015 opinion, *see Bethune-Hill v. Va. St. Bd. of Elections*, 141 F. Supp. 3d 505, 554 (E.D. Va. 2015).

Objections: This interrogatory seeks information about testimony provided to the court by a witness, Delegate Chris Jones, whose deposition has already been noticed in this phase of

the litigation. Plaintiffs have the opportunity to seek this information directly from Delegate Jones.

Answer: Defendant-Intervenors do not know the name of the “potential primary opponent” referenced in this interrogatory.

Dated: July 26, 2017

Respectfully submitted,

VIRGINIA HOUSE OF DELEGATES
AND VIRGINIA HOUSE OF DELEGATES
SPEAKER WILLIAM J. HOWELL

By Counsel

/s/ Katherine L. McKnight

Katherine L. McKnight (VSB No. 81482)

E. Mark Braden (*pro hac vice*)

Richard R. Raile (VSB No. 84340)

BAKER & HOSTETLER LLP

1050 Connecticut Avenue, NW

Suite 1100

Washington, DC 20036

Telephone: 202.861.1500

Facsimile: 202.861.1783

kmcknight@bakerlaw.com

mbraden@bakerlaw.com

rraile@bakerlaw.com

Of counsel:

Dalton Oldham, Esq.

1119 Susan St.

Columbia, SC 29210

Telephone: 803-772-7729

dloesq@aol.com

*Attorneys for the Virginia House of Delegates and
Virginia House of Delegates Speaker William J. Howell*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(RICHMOND DIVISION)

GOLDEN BETHUNE-HILL, *et al.*,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF
ELECTIONS, *et al.*,

Defendants.

Civil Action No. 3:14-cv-00852-REP-AWA-BMK

**DEFENDANT-INTERVENORS' OBJECTIONS AND RESPONSES
TO PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION OF
DOCUMENTS TO INTERVENOR-DEFENDANTS**

Defendant-Intervenors the Virginia House of Delegates and Virginia House of Delegates Speaker William J. Howell ("Defendant-Intervenors"), through their counsel, and pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Local Civil Rule 26(C) of the United States District Court Eastern District of Virginia, and the Memorandum Order entered on July 13, 2017 (the "Order"), hereby state the following objections and responses to Plaintiffs' First Requests for Production of Documents to Intervenor-Defendants (the "Requests").

Where noted these Objections and Responses incorporate by reference those objections and responses served by Defendant-Intervenors in response to discovery issued during the first phase of this litigation. During that phase, Defendant-Intervenors developed agreed search terms and parameters with Plaintiffs and applied those terms and parameters to working files located on the House of Delegates' document management system, as well as to House of Delegates e-mail accounts for delegates including all delegates identified as potential witnesses in the parties' witness lists. *See*, Dkt. Nos. 163, 165, and 166. Defendant-Intervenors reviewed all responsive

documents for privilege and duplication, logged privileged documents, removed any duplicate documents, and produced the remainder with all related metadata as the documents had been kept in the usual course of business. In all, Defendant-Intervenors, made thirteen (13) productions comprised of over 18,400 pages.

OBJECTIONS & RESPONSES

REQUEST FOR PRODUCTION NO. 3: For all statewide and state legislative elections held from 2008 to 2013, produce election vote counts at the level of Virginia's 2010 Census Voting Tabulation Districts (not precincts).

Objections: This request seeks information not maintained by the Virginia House of Delegates. This request also is unduly burdensome. It seeks documents dated after the filing of the Complaint on December 22, 2014, and documents dated prior to when the Virginia General Assembly received census data from the U.S. Census Bureau on or about February 3, 2011.

Response: Subject to and notwithstanding the foregoing objections, to the extent that this information was used by expert witnesses to prepare their reports during the initial phase of this litigation that information was disclosed at the time as required by Rule 26(a)(2)(B). To the extent that this information will be used by expert witnesses during this phase of the litigation, this request is duplicative of Defendant-Intervenors' obligations under Rule 26(a)(2)(B), and Defendant-Intervenors will respond to this request at a time in accordance with the Order.

Dated: July 26, 2017

Respectfully submitted,

VIRGINIA HOUSE OF DELEGATES
AND VIRGINIA HOUSE OF DELEGATES
SPEAKER WILLIAM J. HOWELL

By Counsel

/s/ Katherine L. McKnight

Katherine L. McKnight (VSB No. 81482)

E. Mark Braden (*pro hac vice*)

Richard R. Raile (VSB No. 84340)

BAKER & HOSTETLER LLP

1050 Connecticut Avenue, NW

Suite 1100

Washington, DC 20036

Telephone: 202.861.1500

Facsimile: 202.861.1783

kmcknight@bakerlaw.com

mbraden@bakerlaw.com

rraile@bakerlaw.com

Of counsel:

Dalton Oldham, Esq.

1119 Susan St.

Columbia, SC 29210

Telephone: 803-772-7729

dloesq@aol.com

*Attorneys for the Virginia House of Delegates and
Virginia House of Delegates Speaker William J. Howell*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

GOLDEN BETHUNE-HILL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
VIRGINIA STATE BOARD OF)	Civil Action No. 3:14-cv-00852-REP-AWA-
ELECTIONS, et al.,)	BMK
)	
Defendants,)	
and)	
)	
WILLIAM J. HOWELL, SPEAKER OF)	
THE HOUSE OF DELEGATES, and THE)	
HOUSE OF DELEGATES,)	
)	
Intervenor-Defendants.)	

**DEFENDANTS' OBJECTIONS TO PLAINTIFFS'
JULY 19, 2017 REQUESTS FOR PRODUCTION OF DOCUMENTS**

Defendants, by counsel, hereby serve their objections to Plaintiffs' July 19, 2017 Request for Production of Documents and state as follows:

GENERAL OBJECTIONS

(a) Defendants hereby reserve any objections Defendants may have to the admission in evidence of the information provided herein on the grounds of materiality, relevancy, or other proper grounds for objection.

(b) The information provided herein is not based solely on the knowledge of Defendants, but includes knowledge of Defendants' agents, representatives, and attorneys, unless privileged.

(c) The word usage and sentence structure of the answers may be that of the attorney assisting Defendants and thus does not necessarily purport to be the precise language of Defendants.

(d) Wherever an objection appears below, unless otherwise noted, it is based on the Response being duplicative, unduly burdensome and broad, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, privileged, and/or prepared in anticipation of litigation.

(e) Defendants generally object to the July 19, 2017 Request for Production of Documents to the extent the requests seek attorney work product, privileged communication, and/or information and documents prepared in anticipation of litigation.

(f) Defendants generally object to the extent the Requests for Production of Documents define terms and seek information which is not permissible under the Federal Rules of Civil Procedure or the Local Rules.

RESPONSES TO SPECIFIC REQUESTS

REQUEST FOR PRODUCTION NO. 3: *For all statewide and state legislative elections held from 2008 to 2013, produce election vote counts at the level of Virginia's 2010 Census Voting Tabulation Districts (not precincts).*

RESPONSE: Defendants are unable to respond to this request as they do not maintain election vote counts at the level of Virginia's 2010 Census Voting Tabulation Districts.

EXHIBIT B



Transcript of **CHRISTOPHER MICHAEL MARSTON**

Date: May 18, 2015

Case: BETHUNE-HILL, ET AL v. VIRGINIA STATE BOARD OF ELECTIONS, ET AL

Planet Depos
Phone: 888-433-3767
Fax: 888-503-3767
Email: transcripts@planetdepos.com
Internet: www.planetdepos.com

Worldwide Court Reporting | Interpretation | Trial Services

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

-----x

GOLDEN BETHUNE-HILL, et al., :
Plaintiffs, :
v. : Civil Action No.
VIRGINIA STATE BOARD OF ELECTIONS, : 3:14-cv-852
et al., : REP-GBL-BMK
Defendants, :
and :
VIRGINIA HOUSE OF DELEGATES, et al., :
Intervenor-Defendants. :

-----x

Deposition of CHRISTOPHER MICHAEL MARSTON

Washington, DC

Monday, May 18, 2015

9:51 a.m.

Job No.: 81719

Pages: 1 - 154

Reported By: Dawn M. Hart, Notary Public, RPR/RMR/CRR

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

28

9 Q Have you had other consulting-type
10 arrangements with any other Virginia Republican
11 entities other than what we just talked about in the
12 2009 time frame?

13 A I have.

14 Q Can you describe that for me?

15 A I've had additional independent contractor
16 relationships with the House Republican Caucus as well
17 as with Dominion Leadership Trust, which is a
18 Political Action Committee of the Speaker of the
19 Virginia House of Delegates.

20 Q I think you said an independent
21 contractor -- you have been an independent contractor
22 for the House Republican Caucus?

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

29

1 A Either in my personal capacity or through
2 Election CFO, yes.

3 Q During what time frame was that, or is that?

4 A We've not had a contract with a term length,
5 but I've received compensation for performing work for
6 them at various times from 2009 to 2013 to the best of
7 my recollection.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

30

1 Q Tell me more about the 2009 to 2013 period
2 and your role as a contractor with the House
3 Republican Caucus. What were you engaged to do?

4 A For most of 2009 I was engaged in political
5 work assisting with the election campaign in November
6 of 2009.

7 In 2010 I supported the members during the
8 legislative session. I began to do some work relating
9 to redistricting in 2010. That was primarily what I
10 was occupied with during the legislative session in
11 2011.

12 After that time, I continued to provide both
13 office holder and candidate support in various
14 capacities for several more years.

15 Q Tell me what your role was in terms of the
16 2011 redistricting.

17 A I was responsible for retaining a team of
18 consultants supporting members in their activities
19 related to planning for and executing redistricting
20 and passing a plan.

7447
DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

31

1 BY MR. SPIVA:

2 Q So let me ask you, who retained you to
3 provide the services you were just describing?

4 A The Speaker of the House was responsible for
5 offering me a position and making the decision to
6 retain me.

7 Q Is that Speaker Howell?

8 A Correct.

9 Q Were you retained in your personal capacity,
10 or were you retained through one of the entities we've
11 been talking about?

12 A At times I was compensated through one of
13 the entities and at times personally.

14 Q When you say one of the entities --

15 A Election CFO.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

32

3 Q Your employer being the House Republican
4 Caucus you mean?

5 A Or related entities, yes.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

36

15 Q Then what was your role in the 2010/2011
16 redistricting?

17 A I coordinated the work of the consultants, I
18 provided some direct assistance myself in those areas,
19 and I supported both the members who were principally
20 focused on redistricting as well as assisting them in
21 dealing with other members who, of course, had an
22 interest in their own districts.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

37

5 Q What did that entail?

6 A Oftentimes members would have questions
7 about their current district; what changes might be
8 ahead for their district, what things they would like
9 to see included in a new district, and I would
10 sometimes facilitate that communication between the
11 principal members who were drafting and the members
12 who had questions.

13 Q In this time period were you dealing
14 exclusively with Republican members of the House of
15 Delegates?

16 A There were times during 2011 at which I
17 communicated with Democratic members of the House of
18 Delegates as well. And Independents.

19 Q During this period, this 2010/11 period, I
20 know you mentioned that you were, I guess initially,
21 retained by Speaker Howell.

22 Was he the person who you directly reported

7451
DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

38

1 to in doing the work?

2 A I worked closely with several members. The
3 Speaker was not the most involved of the members for
4 whom I worked.

5 Q Who did you work for mainly?

6 A I worked mostly with Delegate Chris Jones
7 and Delegate Rob Bell.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

40

10 Q What was Mr. Morgan's role in terms of data
11 collection and analysis?

12 A John Morgan is a demographer, and he
13 provided the most support in directly using data in
14 the mapping software that we used.

22 Q I take it from something you said earlier

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

41

1 you don't consider yourself to be an expert in data
2 analysis with respect to redistricting?

3 A I do not.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

43

8 Q Now, was part of your role to collect data
9 in order to draw the maps or have someone draw the
10 map?

11 A I did do some data collection.

12 Q What type of data did you collect?

13 A To the best of my recollection, it was all
14 related to election results and changes in electoral
15 district boundaries over the decade.

16 Q When you say "changes in electoral district
17 boundaries over the decade," what do you mean by that?

18 A So units of local government have control
19 over the precinct lines within their jurisdiction, and
20 it's important to know when those change because it
21 affects how you look at the data.

22 There were also some technical corrections

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

44

1 over the course of the decade in the actual
2 composition of districts and, again, relevant
3 information for purposes of drawing in the future.

4 Q Who did you get the data from that you
5 collected?

6 A Lots of people. Because each of the
7 130-some jurisdictions in the Commonwealth run their
8 own elections and their own precinct boundaries, I
9 wound up communicating with Republican activists, with
10 registrars with the State Board of Elections, with
11 members of the House and other elected officials.

12 Q Then in terms of the data regarding election
13 results, is the list of sources the same, or is that a
14 different list of sources?

15 A The same.

16 Q Did you or any of the consultants working
17 with you collect demographic data?

18 A Yes.

19 Q What kinds of demographic data did you
20 collect?

21 A The principal demographic data was what came
22 from the census and related surveys, like the

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

45

1 American Community Survey.

2 Q For what purpose did you collect that data?

3 A To support our redistricting efforts,
4 including compliance with the Voting Rights Act.

5 Q I take it from that answer that some of the
6 data you collected was data regarding race?

7 A Yes.

8 Q When you say to facilitate compliance with
9 the Voting Rights Act, tell me what you mean by that.

10 A So I mean exactly that, compliance with the
11 Voting Rights Act. It imposes requirements on states,
12 particularly those that require or required
13 preclearance from a Court or the Department of
14 Justice, and there are a host of judicial decisions
15 and administrative guidelines from the Department of
16 Justice regarding what it requires to be precleared,
17 and you have to provide data in that process.

18 Q The demographic data that you collected, did
19 you use that in the map drawing function?

20 A Yes.

21 Q In what way did you use that data, the race
22 data?

7457
DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

46

1 A Along with political data, population data
2 and the like, it was part of the data view we would
3 have as we would draw districts so we could have
4 descriptive characteristics of districts as we drew
5 them.

6 Q Why did that matter, what the race data was,
7 in terms of the drawing of the districts?

8 A The Voting Rights Act imposes various
9 requirements about racial composition of districts,
10 and we needed to know if we were complying.

11 Q What is your understanding of the
12 requirements that the Voting Rights Act imposes in
13 terms of redistricting?

14 A Four years on, my recollection is a little
15 rusty. I know you can't have retrogression, and I
16 know that -- that's pretty much what I know.

17 Q Fair enough.
18 What's your understanding of the term
19 "retrogression"?

20 A My recollection is that it means that a
21 minority group can't have a less of an opportunity to
22 elect a candidate of their choice than under a prior

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

47

1 plan.

2 Q The data collection and analysis you've been
3 referring to, at least with regard to race, was that
4 aimed at determining whether the map would cause
5 retrogression?

6 A Yes.

7 Q How did you determine whether a minority
8 group or minority groups would have a lesser
9 opportunity to elect a candidate of their choice?

10 A We didn't have a hard-and-fast rule to
11 determine that. As with many things in the law, it's
12 a bit of a judgment call.

13 I don't recall how many court decisions I
14 read, but I couldn't get the same answer out of all of
15 them as to what I needed to do, so we did our best and
16 sought legal advice to see if what we were doing
17 appeared to be compliant.

18 Q Did you do -- when I say did "you" do, I
19 mean did you do or direct or interact with one of your
20 consultants who was doing any data analysis to
21 determine whether a proposed plan would cause
22 retrogression?

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

48

1 A Yes.

2 Q Tell me about that.

3 A As we were preparing a plan and when we
4 finished a plan, we would ask our attorneys for their
5 opinion as to whether or not they thought that there
6 was retrogression and, more importantly, whether it
7 could be precleared.

8 Q I guess I'm asking more of a factual
9 question, which is, how did you use the data to
10 determine whether or not there was retrogression?

11 A So we would prepare a list of the 100
12 districts and their racial composition and consult
13 with our attorneys to see what they thought about
14 whether or not we could successfully get the plan
15 precleared.

16 Q Did you do any other data analysis or
17 gathering other than creating a list of the 100
18 districts and the racial composition in terms of
19 trying to determine whether there would be
20 retrogression?

21 A I gathered, but never used, information
22 about election contests that featured a Black and a

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

49

1 White candidate.

2 Q Why did you gather that data about election
3 contests that featured a Black and a White candidate?

4 A At NCSL conferences and similar places I
5 heard about something called racial block voting
6 analysis, which I couldn't really describe for you
7 except that it's about racial block voting, and I knew
8 that that data was required to complete such an
9 analysis and if that's something the members wanted to
10 be able to do, I wanted to make sure I had the
11 information to support them.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

50

8 Q I think that you said that you gathered but
9 didn't use the information about election contests
10 that featured a Black and a White candidate.

11 Did you do any type of a racial block voting
12 analysis?

13 A No.

14 Q When I say "you," again I want to include in
15 that you or the consultants that were working with
16 you.

17 Did anybody in that group perform a racial
18 block voting analysis?

19 A Not to my knowledge.

20 Q Do you know why that was not done?

21 A I do not.

22 Q Did anybody request that you gather this

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

51

1 information about the election contest that featured
2 Black and White candidates?

3 A Not to my recollection.

4 Q That was something that you did on your own
5 initiative?

6 A Yes.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

54

1 Did anyone ever ask you to actually run an
2 analysis once you had gathered the data regarding
3 Black and White candidates?

4 A No.

5 Q Did you ever ask anyone that you were
6 working with in this redistricting process whether
7 they wanted that type of analysis done?

8 A No. I'm sorry, I may have asked, no one
9 ever did.

10 Q Did anyone ever explain to you why they
11 didn't want that type of analysis done?

12 A No.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

57

10 Q Of Virginia.

11 Further down in the e-mail, I guess it's the
12 third paragraph, it says, "The information you need is
13 whether any election, including Democrat primaries,
14 featured a Black and a White candidate."

15 I read that correctly?

16 A You did.

17 Q What was the purpose of gathering
18 information concerning whether any election featured a
19 Black and a White candidate?

20 A As we discussed recently, I collected data
21 in case someone wanted to use that information to
22 conduct a racial block voting analysis.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

58

1 Q Was that something you thought might be
2 necessary in order to comply with the Voting Rights
3 Act?

4 A I knew some people used that analysis as
5 part of their overall analysis of redistricting. I
6 wanted to be prepared in case the members asked me to
7 have that information available.

8 Q I think you testified before that the racial
9 block voting analysis was not in fact ever done?

10 A Not to my knowledge.

20 Q Did you do anything with that information?

21 A I don't believe I did. I do recall
22 contacting other people to supplement that

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

59

1 information. I'm not exactly sure what might have
2 been incomplete or whether I was just asking people to
3 recheck, but ...

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

61

3 You've said that a racial block voting
4 analysis was not, to your knowledge at least, in fact
5 done, correct?

6 A Correct.

7 Q I take it that that means that no type of --
8 you're familiar with the term "ecological regression"?

9 A I've heard the term ecological regression.

10 Q Are you aware of any ecological regression
11 having been done with respect to voting patterns in
12 Virginia?

13 A I am not.

14 Q Have you heard the term "ecological
15 inference"?

16 A I've heard the two parts but not together.

17 Q I assume the answer is the same, that to
18 your knowledge, no ecological inference analysis was
19 done with respect to Black and White voting patterns
20 in Virginia?

21 A Not to my knowledge.

22

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

64

5 Q I assume, to your knowledge, Mr. Ellis never
6 did actually perform a racial block voting analysis?

7 A To my knowledge, he did not.

11 Q I take it from your earlier answers that the
12 same is true of him, that to your knowledge,
13 Clark Bensen never performed a racial block voting
14 analysis?

15 A Correct.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

10 Q You state in the first paragraph, "I would
11 appreciate your help. As part of the analysis
12 required for compliance with the Voting Rights Act, we
13 need to review results from contested elections in
14 which a Black candidate and a White candidate
15 participated."

16 What analysis required for compliance with
17 the Voting Rights Act are you referring to in that
18 e-mail?

19 A I'm not referring to anything that's
20 required. I -- this was the same project I was
21 working on in gathering that data, but my statement
22 that it was required for compliance is likely -- was

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

66

1 likely written to ensure that I got a response.

2 Q Understood.

3 So I take it from that, though, that you're
4 referring to this racial block voting analysis?

5 A Correct.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

68

21 Q In the e-mail you state, "I'm still with
22 Speaker Howell and I'm supporting the Caucus on

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

69

1 redistricting. To comply with the Voting Rights Act,
2 we have to do some statistical analysis. One of the
3 things we need to look at is election returns from
4 races in which both Black and White candidates
5 competed."

6 I take it from our earlier discussion that
7 here you're referring again to -- the statistical
8 analysis you're referring to is the racial block
9 voting analysis?

10 A Yes.

11 Q Let me just ask this, were you intending to
12 include anything else other than racial block voting
13 analysis when you say "to comply with the Voting
14 Rights Act we have to do some statistical analysis"?

15 A I don't have any particular recollection. I
16 know for purposes of this e-mail that was the analysis
17 I was concerned with.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

70

8 Q I take it the answer is still the same with
9 respect to this, that this statistical analysis --
10 racial block voting analysis, this was never actually
11 done?

12 A That's correct, to my knowledge.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

72

8 Q When you got the correct spreadsheet back
9 from Mr. Tyndall, what did you do with that?

10 A I suspect I saved it along with all the
11 other data I had for that purpose.

12 Q Did you ever provide that data to anyone
13 else?

14 A No.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

73

4 Whose e-mail address is that?

5 A Dale Oldham.

6 It appears that I sent it to one of his
7 e-mail addresses and either it bounced because I had
8 it wrong or he requested that I send it to another
9 one, and so I forwarded it to that address.

10 Q The subject is race data.

11 What kind of race data is this referring to?

12 A Based on the name of the attachment and the
13 text, it appears to be about the June 2009 Democratic
14 primary in which Betsy Carr was a candidate.

15 Q Was this part of the data that you'd been
16 collecting for this potential racial block voting
17 analysis?

18 A Probably, but I don't have a specific
19 recollection.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

75

4 Q Let me hand you what will be marked as
5 Exhibit 9.

6 (Exhibit 9 was marked for identification and
7 is attached to the transcript.)

8 Q Mr. Marston, this is an e-mail that appears
9 to be from you to J.R. Hoeft?

10 A Hoeft.

11 Q It is dated 3/18/2011. Subject: Help with
12 redistricting research.

13 Is that an e-mail that you sent to Mr. Hoeft
14 on 3/18/2011?

15 A It is.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

76

9 Q -- "I'm working on the racial voting
10 analysis for Voting Rights Act compliance. I've got
11 to figure out races in which both Black and White
12 candidates both competed. I'm almost done but I've
13 got two Hampton Roads races that I haven't been able
14 to figure out."

15 First question is, the racial voting
16 analysis or Voting Rights Act compliance that you
17 referred to here, I assume that's the same thing we've
18 been talking about, this potential racial block voting
19 analysis?

20 A It is.

21 Q When you say "I'm working on the racial
22 voting analysis," what did you mean by that?

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

77

1 A That I was collecting data to support it if
2 it needed to be done.

3 Q Was there anybody on your team that was -- I
4 understand to your knowledge it wasn't actually ever
5 done, but was there anybody on your team that was
6 tasked with doing it at some point?

7 A I was not tasked and I did not task anyone.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

81

10 Q In terms of the Virginia House
11 redistricting, did you provide similar data, Black
12 voting age population data, comparing one map to the
13 other to the individuals involved in that?

14 A I'm sure that I did.

15 Q What was the reason for providing that kind
16 of data?

17 A It related to preclearance by Justice or the
18 Court. That information needs to be included in
19 analysis you send along with preclearance requests.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

88

16 Q I know you already said that you never did a
17 racially polarized voting analysis and weren't aware
18 of one having been done, but I want to ask you a
19 slightly broader question, which is, did you undertake
20 to evaluate in any way the ability of the minority
21 community in majority-minority districts to be able to
22 elect the candidates of their choice?

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

89

1 A There was no sort of standard statistical
2 test we applied. You know, we eyeballed it.

3 Q In terms of eyeballing, what were you
4 looking for?

5 A That there weren't dramatic changes in the
6 makeup of populations and districts.

13 Q Do you recall whether there was an approach
14 that you or your group that was working on
15 redistricting took in instances where the BVAP had
16 fallen since the previous redistricting?

17 A Our general approach was to work on, you
18 know, balancing population between districts
19 generally. I don't recall a specific approach that we
20 said, okay, on this particular one we should do it
21 this particular way.

22 Q Was there any sense that the

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

90

1 majority-minority districts in Virginia, that they
2 needed to maintain a certain percentage BVAP?

3 A We didn't have any particular threshold or
4 rule that we applied. We knew dropping to 30 would be
5 bad, but we didn't have a particular threshold.

20 Q Did anyone ever tell you that the
21 minority-majority [sic] districts would need to
22 achieve at least a 55 percent BVAP to comply with the

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

91

1 Voting Rights Act?

2 A No.

7 Q I take it from that, that you never told
8 anyone that at least a 55 percent BVAP was necessary
9 in the majority-minority districts in order to comply
10 with the Voting Rights Act?

11 A I did not.

12 Q Was that your understanding, that at least a
13 55 percent BVAP would be necessary in the
14 majority-minority districts in order to prevent
15 retrogression?

16 A No.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

93

16 Q I take it that the boundaries had some
17 effect on the demographics that those districts
18 contained?

19 A Yeah, in almost every case. Occasionally we
20 have a zero population block that doesn't affect
21 demographics, but yes.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

94

6 Q Do you recall whether each of the
7 majority-minority districts met a certain threshold in
8 terms of BVAP percentage after you locked them in?

9 A I don't.

10 Q What other considerations did you discuss in
11 terms of locking in the majority-minority districts?

12 A I don't have a specific recollection. We
13 generally applied the House's redistricting principles
14 to everything, but I don't have a specific
15 recollection.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

105

21 Delegate Jones never said anything to you
22 about there being any kind of a 55 percent BVAP

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

106

1 threshold in either Delegate McClellan's district or
2 anywhere else?

3 A He did not.

22

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

120

16 A It was the election results from the 2008
17 presidential primary.

18 Q Why were you all collecting or reviewing
19 that data?

20 A We were interested in all of the data that
21 would give us an indication of the political
22 propensity of a given precinct or district.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

121

1 Q For instance, were you reviewing the
2 demographic breakdown of the vote from the 2008
3 presidential election?

4 A No, we don't collect that data in Virginia,
5 so we can't review it.

6 Q I see.

7 Were you reviewing the partisan breakdown of
8 the vote?

9 A Yes, absolutely. Although this was a
10 presidential primary, they were all Republican votes,
11 we were reviewing which candidate received how many
12 votes.

13 Q What was the purpose of reviewing that type
14 of data?

15 A The candidates in the 2008 presidential
16 primary fell along the spectrum of least conservative
17 to most conservative, and it was informative to us to
18 see which area supported the most conservative or the
19 least conservative or somewhere in the middle.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

122

16 A Before you do that, can I add to the answer
17 that I gave you about presidential primary data?

18 Q Sure.

19 A In addition to being useful as to which
20 candidate was supported, the turnout data was
21 relevant. If a Republican presidential primary has a
22 high turnout in one county, low turnout in another

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

123

1 county, that tells us something important about the
2 political sway of the county.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

134

6 Q Do you recall any other plans with a 13-seat
7 majority-minority district?

8 A I believe that other plans besides the
9 Commission's were drawn and proposed that had 13
10 majority-minority districts, but I don't recall them
11 with any specifics.

12 Q This talks about reducing the number of
13 County and City splits.

14 Do you know whether that is in comparison to
15 the benchmark plan, or is that in comparison to the
16 2011 plan that was ultimately passed?

17 A I have a reasonably high degree of
18 confidence it was the benchmark plan because the House
19 plan had not -- I don't believe the House plan had
20 been released at this point, and when they say
21 "current plan," I believe that means the benchmark.

22 Q Did you conclude that you feasibly could

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

135

1 have created 13 African-American majority districts?

2 A Yes.

3 Q And did you recommend doing that?

4 A I'm sorry. I concluded that it was
5 certainly possible to create 13 majority-minority
6 districts, in the sense that there was at least a
7 majority of Black voting population, which is
8 50 percent plus 1. This demonstrates you can do it
9 with more than one. But my conclusion was, yes, you
10 could draw 13 majority-minority districts.

11 Q And did you recommend doing that?

12 A I did not.

13 Q And this option, I take it, was ultimately
14 rejected?

15 A All of the Commission's options were
16 rejected.

17 Q Why was this option in particular rejected?

18 A There wasn't a particular consideration
19 individually of each Commission recommendation; they
20 were all rejected because they didn't accomplish the
21 political objectives of the Caucus, which was to elect
22 more Republicans.

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

136

1 Q Was there any consideration of whether the
2 Voting Rights Act required the adoption of 13
3 majority-minority districts if feasible?

4 A Yes.

5 Q What was the conclusion in that regard?

6 A The Commission reached the same legal
7 conclusion that we did, which is that it's not
8 required under the non-retrogression standard.

22

DEPOSITION OF CHRISTOPHER MICHAEL MARSTON
CONDUCTED ON MONDAY, MAY 18, 2015

154

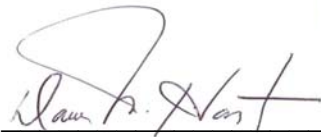
1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Dawn M. Hart, the officer before whom the
3 foregoing deposition was taken, do hereby certify that
4 the foregoing transcript is a true and correct record
5 of the testimony given; that said testimony was taken
6 by me stenographically and thereafter reduced to
7 typewriting under my direction; that reading and
8 signing was not requested; and that I am neither
9 counsel for, related to, nor employed by any of the
10 parties to this case and have no interest, financial
11 or otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have set my hand and
13 affixed my notarial seal this 26th day of May 2015.

14 My Commission Expires:

15 May 31, 2015

16 
17 _____



18 NOTARY PUBLIC IN AND FOR THE
19 DISTRICT OF COLUMBIA
20
21
22

EXHIBIT C

In The Matter Of:
Golden Bethune-Hill, et al. v.
Virginia State Board of Elections, et al.

Delegate Roslyn C. Tyler
May 19, 2015

ZAHN
COURT REPORTING

208 E. Plume Street, Suite 214
Norfolk, Virginia 23510
tel: 757 627 6554 *fax:* 757 625 7077
email: info@zahncourtreporting.com

Original File 051915kw-tyler.txt
Min-U-Script® with Word Index

Delegate Roslyn C. Tyler

13

23 Q Do you have any formal training in
24 statistics?
25 A Yes.

Delegate Roslyn C. Tyler

14

1 Q Can you describe that training for me?

2 A Well, basically my training as far as
3 statistics is my courses, my master's and my courses
4 in physical therapy. We are required to
5 statisticize.

6 Q Do you remember how many statistics
7 courses you took?

8 A Probably two.

9 Q Do you mind me asking what years or
10 approximately what years those would have been?

11 A Probably one is around 1995/96. The other
12 one was probably in 1983.

17 Q Have you ever received any formal
18 redistricting training?

19 A Formal, no.

20 Q Sounds like maybe you received some
21 informal training?

22 A Well, informal being on a local board of
23 supervisors in my area in Sussex. So I've been
24 through redistricting on the local level.

25 Q Oh, okay. Can you tell us a little bit

1 about that? What was your experience with the local
2 redistricting?

3 A Local redistricting, just getting
4 directive as far as from the county attorney when
5 they redistrict the district. And just the
6 percentages, and try to be fairly distributed and
7 those type of population.

8 Q Population equality among districts it
9 sounds like you're referring to?

10 A Yes.

14 Q Does this map look accurate to you?

15 A It does. When I first initially ran in
16 2005, this was my district.

17 Q Thank you. You mentioned 2005. You ran
18 in this district in that year. And what were the
19 results of that election?

20 A I won.

21 Q Do you remember how much you won by?

22 A In my first election, I won basically by
23 231 votes.

24 Q So a pretty small percentage of the vote,
25 correct?

Delegate Roslyn C. Tyler

19

1 A Yes.

2 Q And then did you run again in 2007?

3 A I did. I ran unopposed for two years.

4 Q Okay. So that's 2007 and 2009, correct?

5 A Uh-huh. And then when the map was drawn
6 again, redistricting, ever since then I've had
7 opposition.

19 Q Okay. Did you run in any elections under
20 the 2011 district?

21 A Yes.

22 Q What years were those elections?

23 A The last two elections. I think 2013 I
24 believe and the one previous to that.

25 Q 2011?

Delegate Roslyn C. Tyler

21

1 A 2011.

2 Q So you ran under the 2011 district and
3 2013, correct?

4 A Yes.

5 Q And you said you had an opponent both
6 times?

7 A Yes.

8 Q What was the result of those elections?

9 A I won basically with 65 percent of the
10 vote.

Delegate Roslyn C. Tyler

22

25

Q How would you describe the shape of your

1 districts and its boundaries?

2 A Well, it's not an easy district to follow.

3 Q When you say it's not easy to follow, do
4 you mean it has very irregular borders?

5 A That's right. Very irregular borders.

6 Q Do you think it's a compact district?

7 A I wouldn't say that.

8 Q Is your district mainly rural or mainly
9 urban?

10 A It's rural districts.

11 Q What are the main industries in your
12 district?

13 A Main -- hm -- probably forestry and
14 lumber.

15 Q How many registered voters are
16 Republicans?

17 A I don't know.

18 Q How many registered voters are Democrats?

19 A I don't know the exact number really.

20 Q That's fine.

21 Does your district have any unusual
22 geographic features?

23 A Not really. Just a lot of croplands,
24 dispersed populations.

25 Q Now, does your district include any

1 prisons?

2 A Yes. I have I believe five prisons in my
3 district.

4 Q You said five prisons?

5 A Uh-huh.

6 Q Are you certain of that number?

7 A Let me count them. Sussex, one; Sussex,
8 two; Greenville; Deerfield; Brunswick. Five.

9 Q Do you know the locations of all those
10 prisons?

11 A Yes.

12 Q Have you visited those prisons?

13 A Most of them I have.

14 Q How many people are in those prisons
15 collectively?

16 A I think I looked awhile back. I looked at
17 projection about 5,000. I'm not sure. I think it
18 was around that ballpark.

19 Q Do you know when that was you looked into
20 that number?

21 A Probably in, not the last election, but
22 the previous election. So 2011.

23 Q In 2011, you think the prison population
24 was in the ballpark of about 5,000?

25 A Yeah.

4 Q Do you know how many of those prisoners
5 are white?

6 A No.

7 Q Do you know how many are African-American?

8 A No.

9 Q Are you familiar with the term "black
10 voting age population" or BVAP?

11 A Yes.

12 Q Do you agree that means the percentage of
13 people of voting age who identify themselves as
14 African-American?

15 A I wasn't thinking of that. I was just
16 thinking of that meaning that everybody 18 years and
17 older basically. Not so much based on black
18 population.

19 Q Right. It's my fault for not stating it
20 well. Let me try again.

21 BVAP means the percentage of black people
22 of voting age within a district.

23 A Okay. I never paid attention to that
24 exactly.

3 Q Do you know the BVAP of the prisoners in
4 your district?

5 A No.

6 Q Have you ever tried to calculate that?

7 A No.

15 Q Let's say you didn't count any prisoners
16 in your district in calculating the BVAP of your
17 districts. What would the BVAP of your district be
18 then?

19 A If you didn't count prisons?

20 Q Yeah. Correct.

21 A I don't know how much it would be, but I'm
22 quite sure my district numbers would probably be
23 more.

24 Q I'm sorry?

25 A I was saying that my district numbers

1 would probably be more. I don't know what it would
2 be.

3 Q When you say your district numbers would
4 be more --

5 A If you -- I guess I'm getting it wrong.
6 Well, because the prison population is included in
7 the census.

8 Q Correct.

9 A So that's there. But as far as voting
10 percentage, it wouldn't be a significant increase
11 because they can't vote.

12 Q So are you saying that, if we subtracted
13 all of the prisoners from the calculations, it
14 wouldn't change the BVAP of your district
15 significantly?

16 A It would.

17 Q It would? In what way?

18 A I guess with counting the number of
19 persons that would be eligible to vote, it would
20 have an impact.

21 Q So it would reduce the number of people
22 who are of voting age?

23 A That's right.

24 Q Would it reduce the number of black people
25 of voting age?

Delegate Roslyn C. Tyler

31

1 A Yes.

2 Q Do you think it would reduce significantly
3 the black voting age population in the district as a
4 whole?

5 A As a whole.

6 Q Do you know how much?

7 A I don't know.

8 Q Have you ever tried to calculate that?

9 A No.

20 Q Okay. So just to be clear, would you say
21 it's fair to say that Delegate Jones was the
22 architect of the redistricting plans during this
23 time period?

24 A That's fair to say.

25 Q Nobody else had more responsibility for

Delegate Roslyn C. Tyler

34

1 drawing the lines?

2 A Correct.

3 Q How about on the Democratic side? Who
4 were the main players?

5 A Probably Delegate Dance and Lionell
6 Spruill, Delegate Spruill.

7 Q What were their roles?

8 A Well, their role was to get our input in
9 redistricting some of the lines.

10 Q And you say our input. Who are you
11 referring to there?

12 A Black Caucus.

13 Q So the folks who -- is it fair to say the
14 folks who represent the 12 majority-minority
15 districts?

16 A Uh-huh.

17 Q So Delegate Spruill and Delegate Dance
18 worked to gather input --

19 A That's correct.

20 Q -- from those delegates with respect to
21 the redrawing of their districts?

22 A That's right.

23 Q So did you interact with Delegate Spruill
24 and Delegate Dance?

25 A Delegate Spruill and Delegate Dance.

Delegate Roslyn C. Tyler

35

1 Q What kind of conversation did you have
2 with Delegate Spruill?

3 A I was trying to keep my same district as I
4 possibly could.

5 Q So you were hoping to keep your district
6 as similar as possible to the previous districts?

7 A Correct.

8 Q How about your conversations with Senator
9 Dance?

10 A The same.

11 Q Were they -- did they have slightly
12 different roles? I ask just because I suspect they
13 weren't both doing the exact same thing. So were
14 they working with different people or --

15 A Well, they were communicating back and
16 forth with Chris Jones. So --

17 Q Okay.

18 A -- and that's how they were communicating
19 as far as what district did we have and where we
20 were going.

21 Q So Delegate -- again, is it fair to say
22 Delegate Spruill and now Senator Dance would go and
23 talk to members of the Black Caucus --

24 A Uh-huh.

25 Q -- gather their input and their concerns

1 about the redistricting process --

2 A Uh-huh.

3 Q -- and bring those concerns back to
4 Delegate Jones?

5 A That's right.

6 Q So did you understand, if you were talking
7 with Delegate Spruill or Senator Dance, that you
8 were, in essence, talking to Delegate Jones when it
9 came to redistricting?

10 A Probably, yes. Probably so.

11 Q So do you think it's fair to say that
12 Delegate Spruill and Senator Dance understood the
13 requirements and the criteria that Delegate Jones
14 was using to draw the map?

15 A Yes. Probably more so than anybody else.

16 Q More so than anybody else?

17 A Yeah.

18 Q So it's likely that Delegate Spruill and
19 Senator Dance communicated directly with Chris
20 Jones?

21 A Yeah.

22 Q And it was your impression that Delegate
23 Jones was telling them how the maps were going to be
24 drawn?

25 A Or kind of giving the configuration,

1 similar configuration how it would be drawn.

2 Q So maybe he wasn't telling them exactly
3 where the lines might be?

4 A That's right.

5 Q But he was telling them what the
6 consideration and requirements were?

7 A Or getting the input saying what could be
8 done and what could not be done.

9 Q Right. Thank you.

10 How about Ward Armstrong? Was he involved
11 in any way?

12 A Not so much. I know Ward was caucus
13 leader during that time. He would just say that you
14 probably need to discuss, you know, and follow your
15 lines as the redistricting process progresses.
16 Uh-huh.

17 Q Did you talk with Ward Armstrong during
18 the time about the redistricting process?

19 A No.

20 Q You had no conversations?

21 A No.

Delegate Roslyn C. Tyler

38

- 1 Q How about Delegate Jennifer McClellan?
- 2 A No.
- 3 Q No conversations with Delegate McClellan?
- 4 A No.

2 Q No. Sorry. I probably didn't speak
3 clearly. I said racially polarized voting analysis.
4 And what I'm referring to there -- and this is my
5 personal understanding; different lawyers might have
6 a different understanding -- is it's a statistical
7 analysis of racial voting patterns. And the point
8 of it is to determine whether, for example, white
9 people in one district vote similarly or differently
10 to black people in the same district.

11 A No.

12 Q So you didn't perform any such analysis?

13 A No.

14 Q Of your district or any other district?

15 A Not that I can recall. Because my
16 district probably changed from a Democratic
17 performance district to a more Republican district.

18 Q Do you mind if I ask why you say that, how
19 you know that?

20 A I say that because the further you go out
21 west, it's more a Republican district, more so than
22 what I had initially.

23 Q I see.

24 A So my frame of mind that I knew I was
25 going out into a more Republican district by going

1 out west.

2 Q I see. But it sounds like -- and correct
3 me if I'm wrong -- you didn't do any statistical
4 analysis to determine whether, in fact, moving your
5 district out west made it more Republican. That was
6 just --

7 A Observation and knowing the district.

8 Q Observation, gut feeling --

9 A And knowing the district. And knowing
10 where you had to go to pick up the numbers as far as
11 population.

12 Q Okay. But, again, no formal analysis
13 performed to determine the political change?

14 A No.

15 Q Okay. Thank you.

16 And did anyone ever show you any such
17 analysis of the political changes in your district?

18 A No.

19 Q Do you know if anybody performed such an
20 analysis?

21 A No, sir.

22 MR. SPEAR: I'm handing the court reporter
23 a document that she will mark as Exhibit 6.

24 (Tyler Exhibit 6 marked for
25 identification.)

21 Do you recognize this document?

22 A No.

23 Q Have you seen this document before?

24 A I could have, but I haven't read it.

2 (Tyler Exhibit 7 marked for
3 identification.)

13 Q Do you recall being at this floor debate?

14 A I guess.

15 Q Did you say "yes" or "I guess"?

16 A I'm quite sure. I don't miss sessions.

17 So I had to be there.

18 Q Okay. But you don't specifically remember
19 being there?

20 A No.

7 Q Okay. To your knowledge, are these the
8 criteria that Delegate Jones and others used to draw
9 the new districts?

10 A I believe so, as much as possible.

11 Q Did you ever discuss with Mr. Jones -- I'm
12 sorry -- with Delegate Jones what criteria to use to
13 draw the new districts?

14 A No.

5 Q And did you understand, at the time of the
6 2010 redistricting cycle, that Virginia was subject
7 to Section 5 of the VRA such that its districts
8 would have to be precleared by the Department of
9 Justice?

10 A Yes.

11 Q You do understand that?

12 A Yes.

13 Q Now that we've talked about that, does
14 that refresh your memory that that approval process
15 is called preclearance?

16 A Yes.

17 Q So because of the preclearance
18 requirement, compliance with the VRA had to be a
19 very important consideration, correct?

20 A Correct.

21 Q Because you all knew that DOJ was going to
22 review your work basically?

23 A Correct.

24 Q And for that reason, compliance with the
25 VRA was essential?

1 A Yes.

2 Q Nonnegotiable?

3 A Yes.

4 Q I think Delegate Jones said of the utmost
5 importance?

6 A Uh-huh.

7 Q You have to say "yes."

8 A Yes.

9 Q Sorry. It's not pleasant to remind people
10 of that either I promise you.

11 A That's all right.

12 Q Now, at the time of the 2010 redistricting
13 cycle, Virginia had 12 majority-minority districts,
14 correct?

15 A Yes. I believe so.

16 Q And your district was one of those
17 districts?

18 A Yes.

19 Q Now, do you understand that, under the
20 VRA, those districts couldn't be drawn in a way that
21 caused retrogression?

22 A I didn't understand that, that it couldn't
23 be reduced, but okay.

24 Q I'm sorry. Could you repeat that?

25 A You said retrogression means decrease the

1 number of black minority votes in that area.

2 Q Let's focus on that for a minute.

3 A Okay.

4 Q So I will represent to you that in certain
5 context the VRA prohibits retrogression. So let me
6 ask you what you think retrogression means.

7 A Decreasing the number of voters.

8 Q Okay. So, for example, if the BVAP of a
9 district is 56 percent, and you take it down to
10 55 percent, you think that's retrogression?

11 A Right.

12 Q So another way to put that would be any
13 reduction in minority voting age population equals
14 retrogression?

15 A Okay. I got you.

16 Q Just to be clear, I'm asking you for your
17 view there.

18 A Okay.

19 Q I'm not representing that that's the
20 complete answer. But that's what I'm getting at.

21 Now, Delegate Tyler, during the 2010
22 redistricting cycle, did anyone ever tell you that
23 there's a predetermined fixed BVAP level that all
24 the majority-minority districts had to have?

25 A No. I've heard the percentage 55 percent

1 tossed around. But then Chris Jones, with his
2 conversations, he always talked about plus and
3 minus. I forgot whether it was 5 or 1 percent. But
4 that plus-5 or plus-or-minus-1 deviation, that's
5 what I've heard most of the time during the process.

6 Q So when you say plus-or-minus-1 deviation,
7 that sounds like you're talking about population
8 equality?

9 A Yes. That's what I heard most of the time
10 during the process.

11 Q Thanks. Then you also said you also heard
12 the number 55 percent with respect to BVAP?

13 A I heard 55 percent. I don't know if it
14 was related to BVAP or not. I heard that
15 percentage.

16 Q Who did you hear that 55 percent from?

17 A Just overall, because there was some
18 discussion and in caucus and stuff, and they was
19 talking about a 55 percent. But when it came to
20 drawing the lines, they was more deviation stuff
21 than anything else.

22 Q Oh, I see. You're saying that you thought
23 that there was more discussion about the --

24 A Deviation population.

25 Q -- deviation than the 55 percent BVAP?

1 A Yeah.

2 Q Okay. Well, you said you just heard about
3 the 55 percent threshold from many people. Do you
4 remember specifically talking about it?

5 A Well, when you're talking to Lionell or
6 someone, they would say maybe 55 percent. But when
7 you talk to Chris Jones, he talked about the
8 population deviation.

9 Q So Chris Jones never said anything to you
10 about a 55 percent BVAP threshold?

11 A No.

12 Q Did Lionell Spruill say something to you
13 about that?

14 A Lionell talked about it in discussion
15 about 55 percent. But what that meant, I don't know
16 what it meant. But my conversation was more the
17 percentage deviation, plus and minus of 5 or
18 whatever it was.

19 Q So when Delegate Spruill talked to you
20 about this 55 percent figure, you're saying you
21 didn't understand what he was talking about?

22 A Not as far as population. He just kept
23 talking about 55 percent.

24 Q Uh-huh. And what did you think he meant
25 by 55 percent?

1 A Well, Democratic performance.

2 Q You thought Delegate Spruill was talking
3 about --

4 A More Democratic performance. More so than
5 black minority voters.

6 Q So just to be clear, when you talked to
7 Delegate Spruill about this 55 percent figure, did
8 he explain to you that it was a criteria or a
9 requirement to apply to all the majority-minority
10 districts?

11 A No.

12 Q Okay. So how did he characterize the
13 figure to you?

14 A Well, he would just talk about the number
15 of districts as far as Democrats.

16 Q Okay. So just to make sure I have this
17 straight, and tell me if this is correct. You
18 talked to Lionell Spruill on some occasions?

19 A Uh-huh.

20 Q The 55 percent figure came up?

21 A Uh-huh.

22 Q And you thought that he was talking about
23 Democratic performance of majority-minority
24 districts?

25 A Yes. Democratic performance.

Delegate Roslyn C. Tyler

59

1 Q So you never understood the 55 percent to
2 refer to minority voting strength?

3 A No.

4 Q Did you discuss this with Delegate Dance?

5 A No.

6 Q Never had any conversations about the
7 55 percent with Delegate Dance?

8 A No.

9 Q How about Delegate McClellan?

10 A No.

14 (Tyler Exhibit 8 marked for
15 identification.)

20 Q So as you can see, this is a transcript of
21 a Privileges and Elections Redistricting Public
22 Hearing dated April 4, 2011.

23 Have you seen this document before?

24 A No.

25 Q Do you remember this hearing?

1 A No.

2 Q So I take it you don't remember if you
3 attended it either?

4 A No.

5 Q Please turn to page 41.

6 Are you there?

7 A Uh-huh.

14 Q So this is you speaking at this hearing.
15 First of all, I should stop and ask, do
16 you have any reason to doubt this is you speaking at
17 the hearing?

18 A I guess not.

19 Q Do you normally attend these sorts of
20 hearings?

21 A Not often.

22 Q But no reason to doubt that this is you
23 speaking, correct?

24 A Correct.

25 Q So I'll read now:

Delegate Roslyn C. Tyler

61

1 Delegate Tyler: Yes, sir. Thank you,
2 Mr. Chairman, members of the committee. I'm
3 Delegate Roslyn Tyler. One thing that I would like
4 the committee to take into consideration as you look
5 at the redistricting lines is -- also, as you look
6 at the population for minority districts, I would
7 also like you to look at the voting population in
8 minority districts as well. Because even though you
9 might draw minority districts that may be 55 percent
10 or more, but we need to actually look at the voting
11 numbers in each direct. And I would just like to
12 recommend that to the committee because, as a
13 minority legislator representing the district, it's
14 not always included. And I guess I'm in great
15 concern because my district includes five prison
16 populations. The population is there, but my voter
17 population is not. So I ask you just to take that
18 into consideration.

19 Did I read that correctly?

20 A That's correct.

21 Q Do you think that's what you said on that
22 date?

23 A I believe so. I've always been concerned
24 about the prison population in my district but
25 not -- it always looked like you have more people

1 voting than actually are voting because of the
2 population, including the prison population.

3 Q Uh-huh. But you're not talking about
4 55 percent Democratic performance here, are you?

5 A Democratic -- well, 55 percent voter
6 population.

7 Q Right. Just to make sure I understand.
8 55 percent black voting age population is what that
9 figure refers to here, correct?

10 A Yes.

11 Q Now, why were you referring to the
12 55 percent black voting age population? Why were
13 you referring to that specific figure right there?

14 A Probably because still with prior
15 conversation they said you had to have 55 percent
16 Democratic population votes.

17 Q So again -- and I don't want to put words
18 in your mouth. Tell me if I'm wrong. Are you
19 saying that, in your mind, black voting age
20 population is the same as Democratic performance?
21 In other words, there's a one-to-one correspondence?

22 A What I'm saying is most of the time blacks
23 vote Democratic. So 55 percent of the population.
24 And that's what I said here. Draws minority
25 population with 55 percent.

1 Q Right. So just to be clear. Sorry to
2 interrupt you. Just to be clear, what you're
3 referring to here, though, is 55 percent black
4 voting age population?

5 A Yes.

6 Q You don't say 55 percent Democratic
7 votes --

8 A 55 percent population, correct.

9 Q -- correct?

10 So does that refresh your memory that
11 maybe you did talk to folks about a 55 percent black
12 voting age population --

13 A Correct.

14 Q -- threshold?

15 A Yes.

16 Q Now that does refresh your memory?

17 A Yes. But 55 percent voter population,
18 yes.

19 Q Right. But in your mind, the purpose of
20 ensuring 55 percent BVAP was to help Democrats be
21 elected?

22 A Democratic performance, yes. That's
23 correct.

24 MR. SPEAR: I am handing to the court
25 reporter an exhibit, which she will mark as

Delegate Roslyn C. Tyler

64

1 Exhibit 9.

2 (Tyler Exhibit 9 marked for
3 identification.)

4 BY MR. SPEAR:

5 Q Do you have that exhibit in front of you,
6 Delegate Tyler?

7 A I do.

8 Q This is an email string produced by the
9 House. What I would like for you to do is look at
10 the very bottom of the first page. You see where it
11 says from Chris Jones?

12 A Uh-huh.

13 Q You have to say "yes."

14 A Oh. Yes. I'm sorry.

15 Q That's okay.

16 Do you see where it says date April 7,
17 2011?

18 A Yes.

19 Q Okay. Turn over to the next page, very
20 top of the next page. Do you see where it says to
21 G. Paul Nardo?

22 A Yes.

23 Q Under subject, it says "F/up"?

24 A Uh-huh.

25 Q Do you understand that "F/up" means follow

1 up?

2 A Okay.

3 Q Let me just say that that's what I think
4 it means.

5 A Okay.

6 Q And you're not disagreeing with that?

7 A All right.

8 Q Do you know who G. Paul Nardo is?

9 A Yes.

10 Q So I'm going to read the first paragraph
11 to you here. This is from Chris Jones to G. Paul
12 Nardo.

13 It says: GP, I followed up with Jennifer
14 McClellan this afternoon, and she reconfirmed that
15 the request of Kirk Showalter, Richmond Register,
16 exceeded the 55 percent threshold when they did on
17 the second floor for all affected districts and that
18 she would have never requested it if it didn't. I'm
19 not sure what got lost in translation, but the good
20 news is it is fixed now, and Jennifer will explain
21 the Senate amendment on floor Monday if needed.

22 Did I read that correctly?

23 A Correct.

24 Q So when Delegate Jones is referring to the
25 55 percent threshold here --

Delegate Roslyn C. Tyler

66

1 A Yes.

2 Q -- do you agree that he's referring to
3 that 55 percent BVAP threshold that we just
4 discussed?

5 A Yes.

6 Q So is it fair to read that message as
7 meaning that Delegate Jones thought there was a,
8 quote, 55 percent threshold for BVAP in the
9 majority-minority districts?

10 A Yes.

11 Q You do agree with that?

12 A Uh-huh.

13 Q And is that consistent with your
14 understanding during the redistricting process and
15 what you heard during the process?

16 A Yes.

2 You recall that we looked at your comments
3 at the April 4, 2011, public hearing. And you
4 explained that you were talking about a 55 percent
5 BVAP floor. And then we looked at this message,
6 this email message from Chris Jones to Paul Nardo,
7 and you saw that Chris Jones uses the phrase
8 "55 percent threshold"?

9 A Uh-huh.

10 Q Do you agree with that?

11 A I agree.

12 Q And that he is talking about a 55 percent
13 threshold for black voting age population, or BVAP,
14 in the majority-minority districts, correct?

15 A Correct.

16 Q At the end I asked you if that was
17 consistent with your understanding that there was a
18 predetermined 55 percent threshold for BVAP in all
19 of the majority-minority districts; is that correct?

20 A I don't know whether it was 55 percent for
21 all minority districts, but 55 percent is what I
22 heard.

23 Q 55 percent is the figure you heard. Let
24 me make sure I understand the distinction you're
25 drawing there. Are you saying --

1 A I don't know whether it was for every
2 black representative or not, but that was the number
3 that was floating, 55 percent.

4 Q Okay. So you weren't sure if -- so I
5 think what you're saying is you agree that there was
6 a 55 percent threshold or quota --

7 A Uh-huh.

8 Q -- but you're not sure if it was applied
9 to every district?

10 A That's right.

11 Q Some districts?

12 A Some districts. But I don't know whether
13 all black minority districts. But like I said, that
14 was the percentage, 55 percent or the plus and
15 minus.

16 Q Uh-huh.

17 A That's the term that you kept hearing, the
18 numbers that you kept hearing all the time.

19 Q Okay. And the 55 percent number you
20 heard, you remembered hearing it from Delegate
21 Spruill, correct?

22 A Yeah.

23 Q Did you remember hearing it from Delegate
24 Dance?

25 A No.

Delegate Roslyn C. Tyler

69

1 Q Okay. Is it fair to say, though, that you
2 heard it so much that it seemed to be a matter of
3 common knowledge, at least amongst people who
4 represented the majority-minority districts?

5 A Probably so. I guess it's correct to say
6 that. It was common knowledge.

7 Q So if you walked up to another delegate
8 and said, I don't know about this 55 percent thing,
9 they would probably know what you were talking
10 about?

11 A They probably would, yeah.

13 MR. SPEAR: Now I am handing the court
14 reporter another transcript she will mark as
15 Exhibit 10.

16 (Tyler Exhibit 10 marked for
17 identification.)

Delegate Roslyn C. Tyler

70

3 Q Do you remember this hearing?

4 A No.

5 Q Do you know if you attended this hearing?

6 A No, I don't.

7 Q Please turn to page 25.

8 Are you there?

9 A Uh-huh.

16 Q Thank you. I would like to direct your
17 attention to page 26, line 21, and this is Delegate
18 Dance speaking as we just discussed. Again, you
19 understand Delegate Dance is former Delegate Dance?

20 A Yes.

21 Q She's now Senator Dance?

22 A Correct.

23 Q Delegate Dance says: I can tell you that,
24 if we don't -- whatever redistricting plan comes
25 out, if we don't have at least a 55 percent variance

1 as far as minorities, then we don't really stand
2 much of a chance to be able to live up to what the
3 Department of Justice says we have a right to have.
4 And that also impacts the whole state of Virginia as
5 far as how things have to be shifted.

6 Did I read that correctly?

7 A Correct.

8 Q So do you agree that here Senator Dance is
9 saying that all majority-minority districts had to
10 have at least 55 percent BVAP?

11 A Correct.

12 Q And is that consistent with your
13 understanding that there was a predetermined
14 55 percent BVAP level at least for some districts?

15 A Right.

16 Q And I think you testified earlier that
17 Delegate Jones spoke frequently with Senator Dance
18 about the redistricting process, correct?

19 A Uh-huh.

20 Q So do you think it's likely that she
21 discussed this 55 percent predetermined threshold
22 with Delegate Jones?

23 A Yes. I don't know for sure, but from
24 reading this.

25 Q Okay. Do you think it's a fair reading of

1 this passage to say that Delegate Dance thinks that
2 the reason the 55 percent threshold is important is
3 because it ensures compliance with the VRA?

4 A Yes.

5 Q Do you know if Senator Dance was a member
6 of the Privileges and Elections Committee?

7 A Yes, she was.

8 Q I want to go back and take a look at
9 Exhibit 7 again. This is the transcript of the
10 April 5, 2011, debate.

11 That's the one. Remember there's four
12 pages per page on this one.

13 A Okay.

14 Q Do me a favor and turn to page 66.

15 Are you there?

16 A Uh-huh.

17 Q Do you see on page 66, line 7, where it
18 says "Del. Jones"?

19 A Uh-huh.

20 Q I'll represent to you that this is
21 Delegate Jones talking about the HB 5001 bill.

22 A Okay.

23 Q I'm going to read to you again.

24 Delegate Jones says: Mr. Speaker, I'd
25 said to the gentleman of the plans that have been

1 submitted and/pr circulated around that were
2 complete and total plans, the plan that is before
3 you, in my opinion, fully complies with the Voting
4 Rights Act as 55 percent or higher, which is
5 testimony that we heard during the public hearings
6 of percentage voting age population.

7 Do you see that?

8 A Yes.

9 Q Did I read that correctly?

10 A Correct.

11 Q So do you agree that Delegate Jones is
12 saying that the Voting Rights Act requires
13 55 percent or higher, quote, percentage voting age
14 population?

15 A Yes.

16 Q Is that consistent with your understanding
17 that, in drawing the new map, Delegate Jones adopted
18 a policy under which all the majority-minority
19 districts had to have at least 55 percent BVAP?

20 A Yes.

21 Q And he did that it seems because he
22 thought the Voting Rights Act required it, correct?

23 A Correct.

24 Q Flip to page 70, please.

25 So Delegate Jones is still answering

1 questions about the map.

2 Take a look at line 5 on page 70. He's
3 talking here about alternative maps I believe that
4 had been proposed by university students. That's
5 not important but just for context.

6 He says, quote: I have looked at the 12
7 and the 13th plan, Option 1 and Option 2, and
8 neither one of those plans met what I think from the
9 testimony that we heard throughout this process that
10 the effective voting age population needed to be
11 north of 55 percent. Each of those plans had a low
12 of I think 52, 52 percent.

13 Did I read that correctly?

14 A Correct.

15 Q So again, does it seem to you that
16 Delegate Jones is saying that, under the VRA, each
17 majority-minority districts had to have a, quote,
18 effective voting age population north of 55 percent?

19 A Yes.

20 Q I'm going to ask the question again in a
21 much simpler form to make sure the record is clear.

22 A Okay.

23 Q So from this passage, you would understand
24 Delegate Jones to believe that each of the
25 majority-minority districts had to have at least

1 55 percent BVAP to comply with the VRA?

2 A But when he says here the effective voter
3 age population needs to be north of 55 percent --

4 Q Uh-huh.

5 A -- what does he mean by north of
6 55 percent? Meaning 55 percent and above?

7 Q That's how I would read it. How would you
8 read it?

9 A Well, I don't know whether he meant north
10 of 55 percent or above 55 percent or more, or are he
11 talking about delegates in the northern area needing
12 55 percent?

13 Q Do you think that's what he meant, that
14 delegates in the northern area needed more than
15 55 percent?

16 A I'm assuming, because each of these plans
17 a low of I think 52, 52 percent.

18 Q Well, let me just focus your attention on
19 the language that I read where he says: We heard
20 throughout this process that the effective voting
21 age population needed to be north of 55 percent.

22 So do you think when he says north of
23 55 percent he's talking about effective voting age
24 population?

25 A Well, I don't know whether he's talking

1 about 55 percent population, or is he talking about
2 delegates in the northern area that needs 55 percent
3 population. I'm not sure.

4 Q Okay. Did you ever hear Chris Jones or
5 anyone else say that the 55 percent threshold only
6 applied to delegates in the northern part of the
7 state?

8 A No.

9 Q I'm sorry. Did you say "no"?

10 A No.

11 Q So just to tie this one off, from the
12 documents we've looked at, do you think it's pretty
13 fair to say that there was, at least in Delegate
14 Jones' mind, a requirement that all the
15 majority-minority districts had to have at least
16 55 percent BVAP?

17 A Yes.

22 Q And was it your understanding that this
23 55 percent minimum or quota was also applied to the
24 drawing of your district? In other words, did
25 Delegate Jones try to make sure that you had at

1 least 55 percent BVAP in your district?

2 A I don't know whether he was trying to do
3 it for my district or -- I'm talking about my
4 district. I don't know whether he was trying to
5 make it for my district or not, because most of my
6 conversations was with Delegate Spruill and Delegate
7 Dance.

8 Q Uh-huh. Did you talk with them about
9 needing to get your district above 55 percent BVAP?

10 A I talked to them more about the 55 percent
11 BVAP or percentage, but more about the contiguous of
12 my district -- of having more of my own district
13 rather than new territory. That was most of my
14 conversation back and forth.

15 Q Okay. But in those conversations with
16 Delegates Dance and Spruill, did either they or you
17 talk about whether your district was going to be
18 over 55 percent black voting age population?

19 A I think -- I think more so with Spruill.

20 Q Okay. So you did have those conversations
21 with Delegate Spruill?

22 A Yeah. As far as conversation of. Again,
23 we was referring to Democratic performance. And it
24 could have been he was talking about 55 percent, but
25 I was talking about 55 percent Democratic

1 performance district.

2 Q Okay.

3 A And I say that because we was talking
4 about Democratic district versus Republican district
5 and that you had to have a 55 percent performance,
6 Democratic performance, district. My mind wasn't at
7 55 percent minority voters. My mind was at
8 55 percent Democratic performance district.

9 Q Where do you think Delegate Spruill's mind
10 was in that conversation?

11 A Like you said, his mind could have been
12 55 percent population, because, again, he was on --
13 him and Dance were on the electoral committee.

14 Q Okay. The Privileges and Elections
15 Committee?

16 A The Privileges and Elections Committee.
17 So those two were on those committees, and they were
18 there to help us out in any way they possibly could.

12 Do you remember any conversations with
13 Delegate Jones about your district during the
14 redistricting cycle?

15 A I don't recall a lot of conversation with
16 Delegate Jones.

17 Q Do you recall any?

18 A Well, I had talked to him about my
19 district, that I particularly didn't like it. But
20 he was only able to do what he could with my
21 district.

22 Q And what did you tell him you didn't like
23 about your district?

24 A Well, I didn't like the way my district
25 went out west more so than I thought it could have

Delegate Roslyn C. Tyler

80

1 been -- my district is three hours long. So I was
2 discontent with my district being three hours long.

3 Q That's one of the reasons you said you
4 think it's not a compact district?

5 A That's right. And three hours long is a
6 long district.

7 Q I agree. So do you remember, did you have
8 face-to-face conversations with Delegate Jones,
9 email conversations, other kinds?

10 A I didn't have any emails. I just visited
11 his office one time, and I told him I didn't like my
12 district being so long. And he said it wasn't so
13 much that he could do, because the way the district
14 butted up against, he didn't have any choice.

15 Q Did you ever discuss this 55 percent BVAP
16 threshold with Delegate Jones?

17 A No.

18 Q No? No memory of that?

19 A (Witness shook head.)

20 Q I assume then that means he never
21 explained why he chose the 55 percent figure?

22 A No.

23 Q And you never asked?

24 A No.

Delegate Roslyn C. Tyler

81

4 (Tyler Exhibit 11 marked for
5 identification.)

6 BY MR. SPEAR:

7 Q Do you have that exhibit in front of you,
8 Delegate Tyler?

9 A Yes.

1 Q So there's a conversation involving you
2 and Delegate Jones and Delegate Wright, correct?

3 A No.

4 Q There's not a conversation? There wasn't
5 a conversation amongst you?

6 A Not a three-way conversation, no.

7 Q I see. Who was the -- who did you have a
8 conversation with?

9 A It was -- I was probably talking to Dance,
10 Delegate Dance. I didn't meet with Tommy Wright, or
11 I didn't meet with Delegate Jones.

12 Q Okay.

13 A It had been some discussion with Tommy,
14 because Tommy and my district butt up against each
15 other.

16 Q Right. And which district does he
17 represent? Sorry to interrupt.

18 A I don't know. I don't know.

19 Q That's okay.

20 A But our district goes against each other,
21 butts up. His is the next district next to mine.
22 And there was some discussion about trying to
23 make -- about precincts that was going to be split
24 or something. But, uh-uh, we didn't have a meeting.

25 Q Let me ask you about Nottoway. Am I

1 pronouncing that correctly?

2 A That's right. I don't have that district.
3 That's Delegate Wright's.

4 Q What is Nottoway, a precinct?

5 A Uh-uh. It's a county.

6 Q So when Delegate Jones says "we made
7 Nottoway whole," what does he mean?

8 A He didn't split the county.

9 Q It remains one person's district?

10 A That's right.

11 Q And who -- which district is that?

12 A Delegate Wright's. And then I took in the
13 existing precincts that were within Lunenburg and
14 Hounds Creek and Rosebud. Part of those are in my
15 district.

16 Q And those ended up in your district in the
17 final map; is that correct?

18 A That's correct. So he was trying not to
19 split the counties. But it wasn't no meeting. It
20 was just a discussion of areas that he was trying
21 not to split counties --

22 Q I understand.

23 A -- and just trying to keep them whole.

24 Q Okay. Fair enough.

25 And then on lines 10 through 13, Delegate

1 Jones mentions that there's a couple -- he says,
2 quote: A couple of trades of precincts in the
3 Sussex and Southampton areas between the 64th and
4 the 75th.

5 Did I read that correctly?

6 A Yes.

7 Q And the 75th is your district, correct?

8 A 75th is my district.

9 Q So what was the purpose of those trades of
10 precincts?

11 A It was just the way that it was trying to
12 make the line I guess a little bit more congruent
13 with the 64th district, because I split Southampton
14 and Sussex with another delegate.

15 Q Uh-huh. So were these trades intended to
16 increase the number of African-Americans in your
17 district?

18 A I think it was done to not split precincts
19 in the area.

20 Q Okay. So you don't think it had anything
21 to do with voting age population?

22 A No.

23 Q Or the population of African-Americans in
24 your district?

25 A No.

2 MR. SPEAR: I'm handing the court reporter
3 a document that she will mark as Exhibit 12.

4 (Tyler Exhibit 12 marked for
5 identification.)

6 BY MR. SPEAR:

7 Q Do you have that exhibit in front of you,
8 Delegate Tyler?

9 A Yes.

10 Q Do you see that it says that it's from
11 Chris Marston?

12 A Yes.

13 Q Do you know who Chris Marston is?

14 A No, not really.

15 Q Do you have any idea who Chris Marston
16 might be?

17 A Nope.

1 Q And the title is -- subject is HD61-HD75
2 Dale's Options?

3 A Uh-huh.

4 Q And it has two attachments titled -- the
5 first one is DLO-Southside-3.pdf, and the second one
6 is DLO-Southside-2.pdf.

7 A Uh-huh.

8 Q I'm going to read the message to you. It
9 says, quote: Someone's having trouble following
10 directions. Here are the two options that Dale
11 proposes, neither of which fully address Tyler's
12 concerns. I'll try and generate another one that
13 gets it done without dropping the percent BVAP too
14 low.

15 Did I read that correctly?

16 A Yes.

17 Q Now, where it says, Here are the two
18 options that Dale proposes, do you know who Dale is?

19 A No.

20 Q Could it be Attorney Dale Oldham?

21 A I don't have the faintest idea.

22 Q Okay. Do you see where it says, Neither
23 of which fully address Tyler's concerns?

24 A Uh-huh.

25 Q Are they referring to you, Delegate Tyler?

Delegate Roslyn C. Tyler

88

1 A They could be. Well, I'm the only
2 Delegate Tyler if it's Delegate Tyler. Uh-huh.

3 Q Well, let me ask you this. Had you raised
4 some concerns with Delegate Jones about your
5 district around this time?

6 A I had raised some concerns with --
7 about -- again about the length in district of my
8 area.

13 Q Had you raised any concerns about the
14 percentage of BVAP in your district?

15 A I had -- I was concerned about the
16 decrease in number of black people in my district.

17 Q You were concerned about the decrease in
18 number of black people in your district?

19 A Yes.

20 Q And you raised that concern with Delegate
21 Jones?

22 A I don't know whether it was Delegate Jones
23 or Lionell. But I had that conversation with
24 Lionell, because Lionell did a lot of the
25 communications. I didn't talk a lot to Chris Jones.

1 I always talked to Delegate Spruill or Delegate
2 Dance, because those are the ones who was supposed
3 to be helping us draw our lines. So I didn't do a
4 lot of immediate talking to Delegate Jones.

5 Q I understand. So is it your testimony
6 that you recall talking to Delegate Spruill about
7 concerns about the number of black people in your
8 district?

9 A Yes.

10 Q And it appears from this email he passed
11 those on to Delegate Jones?

12 A Yes.

13 Q So that's what Chris Marston and Chris
14 Jones are talking about in this email exchange, your
15 concerns with the level of BVAP in your district?

16 A Evidently so, because I was concerned
17 about the length of my district, the number of
18 minority vote, people in my district. But I always
19 talked to Lionell and Delegate Dance because those
20 were the people that they had -- that was
21 communicating on our behalf.

22 Q Uh-huh. To be real specific, was your
23 concern that the number of black people of voting
24 age in your district was too low?

25 A Yes.

1 Q Is that what the concern was?

2 A Yeah.

3 Q And why did you think it was too low?

4 A Well, when -- in discussion, I didn't know
5 the percentage or the lower percentage, and I was
6 concerned of when they say 55 percent, that my
7 district have 55 percent. And so that was my thing,
8 that my district have 55 percent or not, because I
9 was going out into a more Republican district. So
10 then what was my percentage of minority.

13 Q So your concern -- again, just making sure
14 I'm understanding -- your concern was that you were
15 aware of the 55 percent threshold --

16 A Uh-huh.

17 Q -- and you wanted to make sure that your
18 district met that requirement, that it was
19 55 percent or higher?

20 A Or close to it as possible if that was the
21 case.

22 Q And would you have preferred that the BVAP
23 was higher than 55 percent in your district?

24 A Well, being a young delegate and going
25 through a district, and I didn't know what 55

1 percent of whatever, I just wanted to be in the
2 ballpark or close to whatever it was supposed to be.
3 So, I mean, whether it was 55 percent or whether it
4 was going to be 52, 53, or whether my district was
5 going to be a swing district.

6 Q So did you communicate to Chris Jones or
7 anyone else a percentage of BVAP that you thought
8 your district should be at?

9 A No.

10 Q You never identified a percentage?

11 A No.

CERTIFICATE OF REPORTER/NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA AT LARGE, to-wit:

I, KIMBERLY A. WATROUS, RPR, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given by DELEGATE ROSLYN C. TYLER on May 19, 2015; that said testimony was taken by me stenographically and thereafter reduced to typewritten form under my direction; that reading and signing was not requested; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 28th day of May, 2015, at Norfolk, Virginia.



Kimberly A. Watrous, RPR
Notary Reg. No. 195088
My commission Expires 09-30-18

EXHIBIT D



Planet Depos®
We Make It *Happen™*

Transcript of James Loewen, Ph.D.

Date: September 20, 2017

Case: Bethune-Hill, et al. -v- Virginia State Board of Elections, et al.

Planet Depos

Phone: 888-433-3767

Fax: 888-503-3767

Email: transcripts@planetdepos.com

www.planetdepos.com

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

-----)
GOLDEN BETHUNE-HILL, et al.,)
Plaintiffs,) Civil Action No.
vs.) 3:14-cv-852-
VIRGINIA STATE BOARD OF ELECTIONS,) REP-AWA-BMK
et al.,)
Defendants.)
and)
VIRGINIA HOUSE OF DELEGATES, et al.,)
Intervenor-Defendants.)

-----)
DEPOSITION OF JAMES LOEWEN, Ph.D.,
Washington, D.C.
September 20, 2017

JOB NO.: 160623

PAGES: 1 - 73

REPORTED BY: Tina Alfaro, RPR, CRR, RMR

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

2

1 Deposition of JAMES LOEWEN, Ph.D., held at
2 the offices of:

3
4 Perkins Coie, LLP
5 700 Thirteenth St, NW
6 Washington, D.C. 20005
7

8 Taken pursuant to notice before Tina M.
9 Alfaro, a Notary Public within and for the District
10 of Columbia.
11
12
13
14
15
16
17
18
19
20
21
22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

14

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

A. I have to say I didn't look over it carefully. I'm astounded at some of this. 7, "All expert reports, analyses, affidavits, and declarations that you drafted, prepared, signed, or relied upon in any and all prior cases in which you have been retained or have testified as an expert." For me to reply to that would require my sending an astounding amount of material.

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

15

1
2
3 A. I've testified in cases on all kinds of
4 things. Any and all prior cases, that's in all
5 fields. I've done this since 1969 and I cannot
6 respond to this without an inordinate amount of
7 expense and time.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Q. On July 11th, a little more than two
months ago, you made a phone call to Mark Elias of
our office and he didn't return the call. Do you
remember making that call?

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

17

1 A. I remember making a call to someone who I
2 considered might know about the case and somebody
3 told me that they might and I don't remember the
4 name. If you say it was to a man named Mark Elias,
5 I will say that's probably the case.

6 Q. And I'll apologize on behalf of Mark for
7 not returning the call, but there's an ethical rule
8 that precludes a lawyer from speaking to an
9 individual who's represented by counsel. Are you
10 familiar with that rule at all?

11 A. Vaguely.

12 Q. So rather than returning your phone call
13 we contacted the lawyers from Baker Hostetler,
14 specifically Kate McKnight, to clarify whether they
15 were your lawyers and whether they would object to
16 us returning your phone call, and in response they
17 told us several things. First, they said you were
18 a client of the Baker Hostetler firm for the
19 purposes of this lawsuit. I gather from your
20 testimony that's not accurate, you are not a client
21 of the Baker Hostetler firm?

22 A. Probably at that point the conversation

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

18

1 hadn't come up and I'm not a client as far as I
2 know.

3 Q. Have you ever been a client of Baker
4 Hostetler?

5 A. I don't know. Not that I know of.

6 Q. Any idea why they were making that
7 representation?

8 A. Well, maybe they're in the same strange
9 situation I'm in, that in a sense they have an
10 expert witness and in a sense they don't. In a
11 sense I'm an expert witness in this case and in a
12 sense I'm not. So I don't know. You'd have to ask
13 them.

14 Q. Have they told you that you're an expert
15 witness in this case? I'll tell you why I'm asking
16 the question.

17 A. I don't know what that means. Let me
18 respond to that. My report from 2001 is referred
19 to by at least one expert witness in the case I was
20 not only told, but I skimmed his report and I saw
21 that. They contacted me because they said my
22 report was involved or important in this

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

19

1 redistricting that occurred in response to the 2010
2 census. So in that sense I'm an expert witness in
3 this case. I've not been engaged as an expert
4 witness in this case that I know of other than to
5 authenticate my report. That's what I'm actually
6 talking about in terms of I am an expert witness
7 and I am not an expert witness.

8 Q. Thank you for that explanation. I'll just
9 tell you you have not been identified as an expert
10 witness in this case. The federal rules have a
11 certain disclosure obligation and you've never been
12 listed as an expert witness. So there's actually a
13 little dispute about that, which is the reason I
14 was asking.

15 You mentioned a minute ago you were
16 billing for your time. How much are you billing
17 for your time? What's your hourly rate?

18 A. \$350.

19 Q. And is that your regular hourly rate?

20 A. That's a hard question to answer because I
21 have not been an expert witness in a voting rights
22 case for more than ten years. So I can't exactly

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

20

1 use the term regular, but in the sense that you
2 mean it, is that the rate I've been charging were I
3 charging, yes.

4 Q. And how much have you invoiced -- first of
5 all, who are you sending the bills to?

6 A. The firm representing -- I don't know the
7 names of these firms.

8 Q. Baker Hostetler?

9 A. Baker. I have invoiced them once and it
10 was for around \$200.

11 Q. And are you collecting time now to send
12 them an additional bill for --

13 A. Yes.

14 Q. So are you being paid by Baker for your
15 testimony today?

16 A. Yes.

17 MR. RAILE: Just to clarify the record,
18 it's for the time -- the way the question was
19 phrased is for the testimony, but obviously it's
20 for the time.

21

22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

21

1 BY MR. HAMILTON:

2 Q. Ms. McKnight also told us that your call
3 was inadvertent -- your call to Mr. Elias was
4 inadvertent and a mistake. Is that accurate? Did
5 you tell her it was a mistake that you reached out
6 to Mr. Elias?

7 A. I don't know that I had a conversation
8 with her about it. I don't recall saying
9 inadvertent and I don't recall saying mistake. I
10 was trying to learn something about the case. I
11 knew I was not an expert and I haven't been
12 engaged. So I was just trying to learn something
13 about the case. I would call it innocent.

14 Q. Why not ask Kate McKnight or someone else
15 from Baker Hostetler about the case?

16 A. They had told me about the case.

17 Q. You wanted a different perspective?

18 A. Yes.

19 Q. Did you alert them in advance of making
20 the phone call that you were going to call them?

21 A. No. I didn't even fully know that I was
22 calling the principal attorneys in the case.

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

23

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18 Q. This case -- and I'll just tell you, I

19 doubt you're aware of this, but maybe -- was tried

20 once before in 2015 and at that time your report

21 was offered into evidence and it was refused by the

22 Court, they did not admit your report the last

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

24

1 time. Were you aware that your report was being
2 offered last time?

3 A. No.

4 Q. Did you have any discussions with the
5 lawyers about the use of your report, either asking
6 them not to use it or agreeing to allow them to use
7 it?

8 A. No.

9 Q. Did they ask you if you thought it was
10 appropriate to use it?

11 A. No.

12 Q. Have you been asked to testify at trial?

13 A. In my life?

14 Q. No. For this trial. Sorry.

15 A. No.

16

17

18

19

20

21

22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

26

1

2

3

4

5 Did you review any other expert reports
6 other than the one prepared by Professor Hood.

7 A. I did not.

8 Q. How did you come to choose the Hood report
9 to review?

10 A. The Baker firm told me that they -- I
11 think they engaged Professor Hood and they shared
12 with me his second report, and I said maybe I
13 should see the first one as well.

14 Q. And did you have any reactions to his
15 report?

16 A. I thought it was competent.

17 Q. Any other reactions?

18 A. No.

19 Q. What do you mean by competent?

20 A. Well done, dealt with the important
21 issues, I found no errors.

22 Q. How much time did you spend reviewing

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

27

1 Dr. Hood's report? You said you hurriedly read it.

2 A. Two reports. Maybe one hour for the
3 combined reports.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

30

1

2

3

4

5

6

7

8 Q. Fair to say you've had extensive
9 experience in redistricting litigation?

10 A. Correct.

11 Q. I take it you have not appeared in
12 connection with redistricting litigation in the
13 last ten years as an expert witness?

14 A. Correct.

15 Q. Is it fair to say that your work in this
16 case was your last major appearance as an expert
17 witness in connection with redistricting?

18 A. I don't know for sure. Probably.

19

20

21

22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

31

1

2

3

4

5

6

7

8

9

10

Q. Were you asked to do any work in
connection with Virginia in the 2010 cycle?

11

A. Not that I recall.

12

13

14

15

16

17

18

19

20

Q. Has there been a side, Democratic versus
Republican, that has typically hired you in
connection with these redistricting cases or have
you worked for both parties?

21

22

A. There's at least four major parties
involved, it's not a simple Democratic/Republican,

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

32

1 and I've worked for all four.

2 Q. What are the other two?

3 A. Well, for example, the NACP, the ACLU, the
4 City of Anchorage, Alaska. I don't think that was
5 even a partisan election. I don't know, but we
6 might call them Defendant side. Although, of
7 course, Republicans can be Defendants, Democrats
8 can be Defendants. I suppose ACLU can be a
9 Defendant. The Department of Justice. So now
10 we're up to five sides I think.

11 Q. What topics have you generally offered an
12 expert opinion on? I know what you did in this
13 case.

14 A. You mean beyond voting rights cases?

15 Q. In voting rights cases.

16 A. The Virginia case would be representative
17 of what I usually testify about.

18 Q. You're familiar with racially polarized
19 voting analyses?

20 A. Yes.

21

22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

37

1

2

3

4

5 Q. You're familiar with ecological inference?

6 A. Vaguely.

7 Q. Have you ever used ecological inference as
8 a tool in connection with any of your expert
9 analysis?

10 A. I have not personally done it. I have had
11 an assistant do it under my direction once, I
12 believe.

13 Q. Do you have a preference for using one
14 over the other?

15 A. I think both are good tools. I think the
16 results of the two in most cases intercorrelate
17 almost perfectly. Ecological regression is simpler
18 to do and easier to explain to a judge or lawyers
19 or anyone else involved. So my preference would be
20 ecological regression. However, I think ecological
21 inference avoids certain problems that can come up
22 with unusual distributions of voting behavior, and

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

38

1 I therefore think it is appropriate to check
2 ecological regression by doing ecological inference
3 too. If an expert witness chooses to do only the
4 latter, that is, ecological inference, that's fine.

5 Q. In doing a racially polarized voting
6 analysis is it fair to say that you want to look
7 for election returns from recent -- look at
8 election returns from recent elections?

9 A. Yes.

10 Q. And we can go through it, but in your
11 report you repeatedly make that statement, recent
12 political behavior offers the best information for
13 predicting future political behavior, or you say on
14 page 12 experts look to recent contests to assess
15 whether and to what degree whites show racial bloc
16 voting and so on. Is it fair to say that's a
17 fairly important principle?

18 A. Yes.

19 Q. And is that -- is it fair to say that in
20 your field in conducting racially polarized voting
21 analyses it's an accepted practice and norm to use
22 the most recently available and relevant election

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

39

1 data for the purpose of doing that kind of
2 analysis?

3 A. I don't -- strike that. I would add this
4 caveat. If there are no recent contests for the
5 office in question, then you have to make due in
6 two different ways, use older election contests for
7 the office in question and sometimes make use of
8 more recent elections for offices.

9
10

11
12

13 Q. Handing you what's been marked as Exhibit
14 No. 3. Do you recognize this document?

15 A. More or less. I reviewed the same report
16 dated September 5th. This one is dated October --
17 I mean, August 31st.

18 Q. Well, let's start with this is a copy of
19 your expert report from the 2001 redistricting
20 cycle or a version of that report; is that right?

21 A. Seems to be, yes.

22 Q. Okay. And then you've reached into your

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

40

1 briefcase and pulled out another document. Is this
2 an updated version of that report?

3 A. Apparently so and it's, as I mentioned,
4 dated I guess six days later.

5 Q. Do you know if it's different in any
6 material way?

7 A. I wouldn't know because I haven't reviewed
8 the August 31st document for 16 years, but it look
9 to be identical in the table of contents except
10 that the pagination does become different. The
11 items -- well, let me study the items for a moment
12 before I make a statement about the items in the
13 table of contents.

14

15

16 A. There are differences. The document you
17 just gave me dated August 31st includes comments on
18 the Lublin report about compactness. The document
19 I've just been reviewing, the document dated
20 September 5th does not include that in the table of
21 contents and is therefore shorter. There may be
22 other small differences.

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

41

1 Q. Do you know which version of this was
2 submitted to the Court?

3 A. I don't.

4 Q. Are there any other versions of this
5 report other than the one you pulled out of your
6 briefcase and the one we've marked as Exhibit
7 No. 3?

8 A. I have no idea.

9 Q. Assuming that the data is available, that
10 is, there have been more recent elections, correct
11 me if I'm wrong, but I think what you said is you
12 would want to use the most recently available
13 electoral data for the purpose of doing a racially
14 polarized voting analysis?

15 A. If I were an expert witness in this case I
16 would ask for a list of all elections that have
17 been held in Virginia that might possibly be
18 relevant, certainly all the elections for the two
19 offices in question, the Senate and the House, and
20 some other offices as well. I guess that's maybe a
21 yes.

22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

42

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Q. So what you asked for when you did this

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

43

1 racial bloc voting analysis was for the most recent
2 ten years worth of data?

3 A. I did.

4 Q. And that's an appropriate data set to be
5 looking at in order to do a racial bloc voting
6 analysis, right?

7 A. It would be appropriate. I wouldn't have
8 asked for it if it was not appropriate. Do you
9 mean is it sufficient?

10 Q. You can -- sure, let's answer that
11 question.

12 A. You didn't ask that. I'm asking what is
13 your question?

14 Q. Is it sufficient? Was that a sufficient
15 data set for you, sir?

16 A. It would depend --

17 Q. In this instance was this a sufficient
18 data set for you to draw these conclusions?

19 A. In some districts, for some districts, no,
20 but I did the best I could. Generally in this
21 instance, yes.

22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

44

1

2

3

4

5

6

7

8 Q. If a state is growing rapidly and the
9 demographics are changing rapidly, that would make
10 older electoral returns even less relevant to
11 current political behavior; isn't that true?

12 A. It might.

13 Q. A racially polarized voting analysis is
14 specific to a particular district, isn't it, as a
15 general proposition?

16 A. I don't know what you mean by that. What
17 do you mean by "specific"?

18 Q. Racially polarized voting analysis of a
19 district, say, for example, in the Tidewater region
20 of Virginia, wouldn't tell us much about voter
21 behavior in, say, Northern Virginia in the
22 Washington, D.C. suburbs, correct?

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

45

1 A. I find that actually hard to answer. I
2 can't quite say correct. I notice that you
3 changed, for instance -- let's put it this way.
4 The way that people behave in a given district is
5 likely to be the way they behave in the next
6 contiguous district. So when you changed your
7 question you made the districts further apart.

8 Q. I'm trying to clarify it for you, sir.

9 A. I understand. I'm just explaining my
10 answer. I think that if I found -- for example, if
11 I found a black-white contest in a district that
12 showed that a black candidate was the candidate of
13 choice of the black community and the white
14 candidate was the candidate of choice of the white
15 community, I would expect then that that kind of
16 racial polarization would probably occur in other
17 districts in the state, even districts located as
18 far apart as Nova versus Tidewater. On the other
19 hand, I would, of course, want to do that analysis
20 in Nova and see how it came out and that would be
21 the best way to estimate the racial behavior of the
22 Nova district.

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

46

1 Q. You wouldn't just rely on your guess or
2 assumption? You would want to test it empirically,
3 correct?

4 A. If I could I would, yes.

5 Q. A racially polarized voting analysis of a
6 urban area like Richmond wouldn't necessarily be
7 informative of voting behavior in more rural parts
8 of the state, would it?

9 A. It would not necessarily.

10 Q. Isn't it fair to say different districts
11 as a general rule behave differently and it depends
12 upon the makeup of the voters and voting behavior
13 within each district? That's just true as a
14 general proposition, isn't it?

15 A. No. I think it's more accurate to say
16 different districts often behave about the same,
17 but you have to check it by looking at the specific
18 districts you have in mind.

19 Q. Is it -- it's not your testimony that
20 voters in an urban area like Richmond vote the same
21 way as voters in rural parts of Virginia, is it?

22 A. The first thing you want to -- I think

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

47

1 we're trying to make a distinction when there is
2 none. The very first thing you want to do is you
3 want information from the geography that you're
4 trying to estimate.

5

6

7

8

9 A. The best way to answer that question would
10 be empirically, to get information from people -- I
11 mean, from contests in rural areas and contests in
12 Richmond and then that's an empirical question.

13 Q. And then the contests you'd want to look
14 at are contests within at least the last ten years?

15 A. At least the last ten years, yes.

16 Q. There's no one size fits all rule that
17 would define the proper level of black voting age
18 population necessary for a minority population to
19 have the ability to elect the candidate of its
20 choice in all districts across a state; isn't that
21 right?

22 A. Correct.

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

48

1 Q. In fact, you've written "We know that the
2 proportion of a district's population that must be
3 minority in order for minorities to have a 50/50
4 chance at election of candidates of their choice is
5 and always has been an empirical question"?

6 A. Correct.

7 Q. And you've written that "No single rule
8 can be maintained. It is an empirical question.
9 Research of the type I have done utilizing
10 correlation, overlapping percentages analysis, and
11 ecological regression is required to determine the
12 proportion that each group must be in in the
13 electorate to have a chance to prevail." Right?

14 A. Yes.

15 Q. And by "empirical question" you mean it's
16 a factual question that must be examined in each
17 specific instance?

18 A. Correct.

19 Q. And the factual question must be examined
20 with respect to the particular geography or
21 district at issue?

22 A. If possible. I mean, as an expert witness

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

49

1 I would want to do my best. I'm imagining a
2 district in which, for example, there have been no
3 contests for whatever reason, maybe an incumbent
4 has been in for 22 years or whatever and nobody has
5 contested. So you might make a better estimate
6 than by -- rather than just throwing up your hands
7 and saying you can do nothing, it might be useful
8 to use an adjoining district or a contest for a
9 different office and use your best judgment as to
10 what you infer from that information.

11 Q. Sure. But if the data is available, the
12 election returns are available, the census data is
13 available, then you'd want to look at the specific
14 question relating to that particular geography and
15 those particular voters; isn't that true?

16 A. Correct.

17 Q. In your -- do you recall preparing an
18 expert report in the Diaz versus Silver case?

19 A. I regret to admit that I don't always
20 remember cases by their title. Can you tell me the
21 jurisdiction?

22 Q. It was New York City.

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

50

1 A. Yes. Well, I don't know if it was that
2 case again, but yes, I did do an expert report in
3 New York City.

4 Q. And there you wrote -- I think you already
5 answered the question, but you wrote "No single
6 rule can be maintained, it's an empirical
7 question."

8 A. That's for sure.

9 Q. And when you say "No single rule can be
10 maintained," you were referring at the time to a
11 65 percent -- supposed 65 percent black voting age
12 population rule; do you remember that?

13 A. Well, I certainly have referred to that
14 rule in the past and argued that it is not a rule
15 and should never have been a rule.

16 Q. And the same would be true for if someone
17 were to contend that there was a rule that applied
18 statewide or maybe nationwide as a 60 percent black
19 voting age population, correct?

20 A. It's always an empirical question,
21 correct.

22 Q. The same would be true with a 55 percent

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

51

1 black voting age population --

2 A. Correct.

3 Q. -- it's an empirical question that's going
4 to depend upon the facts and circumstances in each
5 particular geography, assuming that's available,
6 correct?

7 A. Yes. I'll stay with yes.

8 Q. In 2011 in Virginia the legislature
9 reconfigured the House of Delegates districts I
10 will represent to you and I'm sure you're probably
11 aware of that. Have you ever conducted a racially
12 polarized voting analysis of those districts?

13 A. No.

14 Q. Do you know to what extent the 2011
15 districts were modified from the benchmark or
16 original districts from 2001?

17 A. My only knowledge would be from the
18 sources that I skimmed which I already mentioned to
19 you. I have no other independent knowledge about
20 those districts.

21 Q. You didn't examine or you haven't studied
22 how many black voters were added or removed from

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

52

1 the particular districts in 2011?

2 A. No.

3 Q. You haven't studied voting behavior in the
4 House of Delegates districts between 2001 and 2011?

5 A. Correct, I have not.

6 Q. Had you been asked, I gather you could
7 have prepared a report like Exhibit 3 but in
8 connection with the 2011 redistricting effort,
9 correct, you could have done that?

10 A. I am capable of preparing a report.

11 Q. That's all I'm asking.

12 A. Whether I would have said yes to the
13 request is another matter.

14 Q. You were capable of it had you been
15 willing to?

16 A. Yes.

17 Q. And I take it what you would have done is
18 probably the same thing that you did in 2001, for
19 starters, you would have asked for election returns
20 from as many elections as possible over the
21 preceding ten years?

22 A. Certainly. I would not have to go back

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

53

1 further because I already did it.

2 Q. But you would have looked at the last ten
3 years because that would be the most relevant data?

4 A. I would.

5 Q. So let's talk about Exhibit 3 a little
6 bit. Who hired you in that case to prepare your
7 expert analysis?

8 A. I think I answered that already, didn't I?
9 It it seems to me it was the State of Virginia.

10

11

12

13

14

15

16

17

18

19

20

21

22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

55

1

2

3

4

5

6

7

8 Q. In preparing your report, Exhibit 3, did
9 you look at census data from 1980?

10 A. I don't remember.

11 Q. Did you look at census data from 1990?

12 A. Yes. I think.

13 Q. Did you look at census data from 2000?

14 A. Yes.

15 Q. You think you looked at census data from
16 1990?

17 A. I do.

18 Q. For what purpose?

19 A. Because some of the elections hale from,
20 for example, 1991 and you want to use the census
21 closest to the point in time of the election.

22 Q. How about election return data from the

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

56

1 1980s in your report in 2001?

2 A. I don't remember.

3 Q. Did you look at any election returns from
4 the 1990s?

5 A. Yes.

6 Q. I take it you had confidence in your
7 analysis at the time it was prepared?

8 A. I did.

9 Q. Do you still think it's reliable to
10 describe voter behavior in 2011?

11 A. That's an empirical question. I don't
12 know.

13 Q. So you don't know whether -- well, strike
14 that.

15 If we wanted to know about voter behavior
16 in 2011 we'd want to look at the more recent
17 election returns, wouldn't we?

18 A. Yes. I would start with my report, but
19 then I would look at the most recent elections.

20 Q. You'd want to look at the most recent
21 census information as well to determine how the
22 districts changed?

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

57

1 A. I would.

2 Q. And I think you've answered this question,
3 but you have not studied the 2010 census data for
4 Virginia?

5 A. Correct.

6 Q. And you've not studied the election data
7 for the House of Delegates elections since the date
8 of your report, which is --

9 A. Correct.

10 Q. -- 2001?

11 Do you know if urban whites in Richmond
12 have tended to vote for Democrats or Republicans
13 from 2001 to 2011?

14 A. I don't.

15 Q. Do you know how urban whites in Richmond
16 have voted at any point after 2011?

17 A. I don't.

18 Q. If you wanted to know that it wouldn't be
19 a difficult thing to study, correct?

20 A. Correct.

21 Q. The data is there, it's just you haven't
22 had occasion to take a look at it?

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

58

1 A. So far as I know the data is there, yes.

2 Q. Backing up more generally, do you know if
3 urban whites in Virginia have tended to vote for
4 Democrats or Republicans from 2001 to 2011?

5 A. The only knowledge I would have about
6 urban whites in general would be coming from, for
7 example, the Washington Post discussion of
8 elections in Virginia. In other words, it would be
9 lay knowledge. I have not done any sociological
10 analysis of voting behavior since my report of
11 2001.

12 Q. To your knowledge, have the demographics
13 of Virginia changed at all over the last 20 years?
14 Is this a state that's changed a lot or a little or
15 none?

16 A. I don't exactly know what standards we
17 would employ for a lot, but sure, I have at least a
18 newspaper reader's understanding of the increase in
19 population in Nova. Also from skimming the report
20 by --

21 Q. Dr. Hood?

22 A. -- Professor Hood I am aware that the

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

59

1 population in majority black districts has
2 generally decreased because those districts then
3 had to be enlarged to meet the requirements of the
4 one person, one vote mandate. Other than that I
5 don't have any particular knowledge of population
6 shifts in Virginia.

7 Q. Do you know whether there's been any
8 gentrification in downtown Richmond?

9 A. No. I would assume there has, but I have
10 no particular knowledge one way or the other.

11 Q. You haven't looked at it, you haven't
12 studied that?

13 A. I have not studied it.

14 Q. And I gather, then, you don't know whether
15 more whites have moved to downtown Richmond as of
16 2017 than might have been there in 2011, for
17 example?

18 A. I do not.

19 Q. And you also don't know if more whites
20 have moved to downtown Richmond as of 2011 than,
21 say, in 2001?

22 A. I do not. I find this a little bit

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

60

1 tedious. I mean, my answers have pretty much been
2 clear with you that I haven't done any on the
3 ground or statistical research on Virginia since
4 2001. So I think that answers all of these
5 questions.

6

7

8

9

10

11

12

13 Q. Let's assume for the purposes of this next
14 question that it's true that urban white voters
15 tend to vote for the same candidates as urban
16 African-American voters while the level of racially
17 polarized voting is higher in rural Virginia. If
18 that's true, wouldn't it necessarily be true that
19 the black voting age population required for
20 African-American voters to elect the candidate of
21 their choice would be different in urban Virginia
22 than in rural Virginia?

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

61

1 A. It might definitely be possible that would
2 be the case, yes. I would go further. If the
3 candidate of choice of the white electorate in a
4 given district is often the candidate of choice of
5 the black community as well, which we can determine
6 from ecological inference and ecological
7 regression, then there is no need for a given
8 population percentage with one caveat.

9 It's true everywhere and it's definitely
10 true in Virginia that the percentage black that a
11 district is can have a warming or chilling effect
12 on the white electorate and on the black
13 electorate. So I would want to make sure that the
14 white folks in a majority black district have not
15 been chilled, by which I mean that their behavior
16 in that district is likely to be predictive of
17 their behavior for the district to become, say,
18 25 percent black in its racial composition rather
19 than 55 percent.

20
21
22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

62

1 Q. At the time of the 2011 redistricting did
2 you at any point speak with Delegate Chris Jones,
3 the principal map dropper?

4 A. At the time of the what?

5 Q. 2011 redistricting.

6 A. Not that I remember.

7 Q. There's a gentleman named John Morgan who
8 assisted Delegate Jones. Have you ever heard of
9 John Morgan?

10 A. Not that I remember.

11 Q. So I take it you didn't speak with him
12 either?

13 A. Not that I remember.

14 Q. How about staff, legislative services
15 staff in the Commonwealth of Virginia or any of the
16 lawyers involved in the redistricting process?

17 A. Let's put it this way. In 2010, 2011,
18 2012 I may have had a phone call from somebody, but
19 I never got engaged and I don't recall any phone
20 call from anybody.

21

22 What's a confidence interval?

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

63

1 A. A confidence interval is an estimate you
2 place around -- excuse me. It's an interval you
3 place around an estimate and you are either
4 95 percent sure or 99 percent sure or some other
5 percent sure that the true number of whatever you
6 are estimating lies within that interval.

7 Q. Fair to say that a confidence interval
8 tells us how likely it is that a given estimate is
9 accurate?

10 A. Yes.

11 Q. The concept of a confidence interval is
12 taught in most introductory classes in statistics,
13 right?

14 A. Correct.

15 Q. Fair to say that a confidence interval
16 tells us the extent to which a given ecological
17 regression or ecological inference estimate is
18 statistically significant?

19 A. No.

20 Q. The confidence interval tells us the
21 extent to which a given ecological regression or
22 ecological inference estimate is accurate within a

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

64

1 certain range, correct?

2 A. Not exactly. Confidence intervals are
3 usually used to -- in situations where you are
4 sampling. That's why you always hear a Gallup
5 poll, for instance, saying so-and-so is getting
6 49 percent of the vote but that's with a confidence
7 interval of 2 percent or 3 percent or whatever.

8 Q. Sometimes called polling error?

9 A. Yes. What you are trying to say when you
10 use that confidence interval phrase is we do not
11 know, we cannot know the exact percentage of the
12 voters who are going to vote for, let's say, Donald
13 Trump. We estimate 49 percent plus or minus, let's
14 say, 3 percent. There is a fact out there if we
15 have full knowledge of every voter in the United
16 States as of that moment -- of course things can
17 change, we may be polling on Halloween and the
18 election is November, but as of that moment let's
19 say Donald Trump is, in fact, likely to get
20 48 percent of the vote. We don't know that because
21 we cannot sample all these mines, but we have
22 sampled 1,400 people or whatever we sampled. So we

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

65

1 estimate 49 percent plus or minus 3 percent, let's
2 say. Okay. That's the usual and that's very
3 definitely an appropriate use of the confidence
4 interval.

5 When you're doing ecological regression
6 you are not sampling, you have the entire
7 population. You know the voting age population and
8 you know the voting age population for each
9 district, each precinct or whatever unit you are
10 using. The census can make mistakes I suppose, but
11 you don't -- there's no way to talk about that
12 even. We have no idea.

13 Q. So if --

14 A. We also have the actual votes. We know
15 that -- going back to Smith or Jones, our previous
16 case in Virginia, we know that Jones got X votes in
17 a precinct and we know that Smith got X votes. So
18 the use of the confidence interval in ecological
19 regression is not common and it's not clear what it
20 does tell us.

21 Q. If I have a hypothetical ecological
22 regression estimate of, say, 65 percent of whites

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

66

1 voting for a certain candidate with a 95 percent
2 confidence interval, does that mean anything to
3 you?

4 A. A 95 percent confidence interval of what?
5 What is the interval? You didn't say.

6 Q. As low as 60 percent or as high as
7 70 percent. That means --

8 A. You're saying 5 percent --

9 Q. Let me finish the question. That means we
10 can say with 95 percent confidence that the true
11 value of white support for that candidate is
12 between 60 and 70 percent, correct?

13 A. That's what that phrase means. It's not
14 exactly clear to me what I would make of that
15 statement. As I say, I don't think most people
16 using ecological regression and ecological
17 inference put that kind of percent around it, but
18 maybe some do and I wouldn't fault them for doing
19 so. I'd have to think about what it tells us.
20 Certainly ecological estimates can be off, but
21 whether that offness is described by that kind of
22 confidence interval I'm not sure.

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

67

1 Q. So Dr. Katz is another one of the
2 Intervenor's experts. If you were to testify that
3 ecological inference estimates are always or are
4 usually reported with a confidence interval in the
5 literature, you would disagree with them on that?

6 MR. OLDHAM: Object to form.

7

8 A. I don't know. I haven't reviewed this
9 literature much for the last 17 years. So --

10 Q. Have you done any ecological inference or
11 regression analyses in the last 17 years?

12 A. I don't know. Not that I recall.

13 Q. Have you taught any ecological regression
14 or ecological inference in courses that included
15 teaching how to conduct that or report that sort of
16 estimate?

17 A. In the last 17 years?

18 Q. Correct.

19 A. No.

20

21

22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

68

1

2

3 Q. Let me ask you some questions, Dr. Loewen,
4 about Exhibit 3, your report. Among the things you
5 were looking at in 2001 was the extent of racially
6 polarized voting in various districts in Virginia,
7 correct?

8 A. Yes.

9 Q. And you were analyzing the level of black
10 voting age population that might be necessary in
11 particular districts to give African-American
12 candidates of choice even odds of winning an
13 election; is that right?

14 A. Yes.

15 Q. And you repeated that analysis for each of
16 a number of different districts?

17 A. Yes.

18 Q. The answer was different for the different
19 districts?

20 A. As I recall, it wasn't radically
21 different.

22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

70

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16 Q. Had you been engaged in 2011 or been asked
17 in 2011 about racially polarized voting in the
18 Commonwealth of Virginia in these districts, you
19 would have collected data and performed an analysis
20 similar to what we see here in Exhibit 3, correct?

21 A. Yes.

22 Q. You certainly wouldn't have just handed

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

71

1 Exhibit 3 to the legislature and say this is still
2 accurate and you can rely on this?

3 A. Correct.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Transcript of James Loewen, Ph.D.
Conducted on September 20, 2017

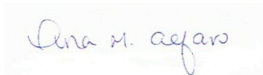
73

CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

I, TINA M. ALFARO, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; that reading and signing was requested; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 21st day of September, 2017.

My Commission expires October 31, 2020.



NOTARY PUBLIC IN AND FOR THE
DISTRICT OF COLUMBIA